

Richardson, Robert

THE  
**Attorney's Practice**  
IN  
**The Court of Common Pleas :**  
OR, AN  
**INTRODUCTION**  
TO THE

Knowledge of the Practice of that Court, as  
it now stands on the Regulation of  
several late acts of Parliament, Rules and  
Determinations of the said Court :

WITH  
Variety of useful and curious Precedents in *English*,  
drawn or perused by Counsel; and a Complete  
INDEX to the Whole.

By the Author of *The Attorney's Practice in the  
Court of King's Bench.*

The **Second Edition**, with large **Additions.**

**In Two Volumes.**

In the SAVOY:

Printed by HENRY LINTOT, (Assignee of *Edw. Sayer, Esq;*)  
for *T. Woodward*; and sold by *G. Hawkins* at *Milton's*  
*Head* between the *Temple-Gates*, *T. Waller* at the *Mitre* and  
*Crown* against *Fetter-Lane Fleetstreet*, and *J. Osboyn* at the  
*Golden Ball* in *Pater-noster Row.* M.DCC.XLVI.

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**N.B.** Since the printing the following  
sheets, *Henry Butler Pacey*, Esq; is  
appointed Second Prothonotary in  
the place of *William Thomson*, Esq;  
deceased.

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THE

# PREFACE.

**T**HE Attorney's Practice in  
the Court of King's Bench  
having met with a very favour-  
able reception, and been univer-  
sally allowed to be the most use-  
ful book of the kind hitherto pub-  
lished, the author of it was in-  
duced to compile the following  
work, which he formed on the

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same

## P R E F A C E.

*same plan with the former; herein are set forth under their proper heads the several acts of parliament relating to the practice, such rules of court as are now in force, adjudged cases on most points of practice, and a great variety of useful precedents.*

*The statutes and rules of the court are not set forth in a brief or summary way, but the enacting and ordering parts generally at large, so that the reader will scarce ever have occasion to apply to the statutes or rules themselves.*

*To the acts of parliament, rules of court and adjudged cases, the author has chiefly confined*  
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## PREFACE.

ned himself in this work, chusing rather to be silent, than to say any thing for which he had not sufficient authority, and being cautious of nothing more than leading the young practicer into a mistake.

The precedents, of which the greatest part were drawn or persued by counsel, are such as will be most frequently wanted in the general course of business.

To render this book the more useful, a very copious index is added, drawn under a great variety of heads, so that the reader may with ease apply to any particular point of practice he shall want to be informed of.

## P R E F A C E

This work, as well as the former, has been so well received as to produce a Second Edition, which the author has made agreeable to the practice as varied since the publication of the former edition, and enlarged with many additional notes and observations.

To this edition is added a new volume of pleadings, a thing desired by many, and it is hoped, will be acceptable to all who are willing to attain a competent knowledge in their profession; for it is a certain truth, that he can never be an able attorney who is not a good entering clerk, and tolerably well skilled in  
Special

## P R E F A C E

*special pleading. Formerly all attornies drew their own pleadings, and never had occasion for any assistance but the advice of the most learned. This kind of learning, which is now too much neglected, led them into the very reasons of the practice, and into a knowledge of the common law, which none but a special pleader can be said to be thoroughly master of: An attorney, without being acquainted with special pleading, can have no other, than a confused knowledge of such particular instances of practice only as have passed through his own hands, and upon the least variation is as much at a loss as if he never knew any thing of the matter; hence spring demurrers,*

## P R E F A C E.

*demurrers, motions, expence and  
endless delays to the suitors, and  
discredit to the practicer; for  
which Reasons the loss of this  
branch of learning amongst the  
generality of the profession is  
greatly to be lamented, and the  
retrieving of it can't be too much  
recommended.*

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T H E

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THE  
**Attorney's Practice**  
IN THE  
**Court of Common Pleas.**

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*Of the Jurisdiction of the Court.*

**A**LL Pleas are regularly divided into Pleas of the Crown, and into Common or Civil Pleas. Pleas of the Crown are those which concern Treasons, Felonies, Misprisions of Treasons, &c. This Court is the Lock and Key of the Common Law in Common Pleas, and therefore called the *Court of Common Pleas*; for in this Court real Actions, whereupon Fines and Recoveries (the common Assurances of the Realm) do pass, and all other real Actions by original Writs, are to be determined. In all personal and mixt Actions, this Court and the Court of *King's Bench* have a concurrent Jurisdiction.

The Jurisdiction of this Court is general, and extendeth itself throughout all *England*.

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## The Attorney's Practice

Generally all Suits in this Court are founded upon original Writs issuing out of the *Chancery*, and returnable in this Court, whereupon the Plaintiff proceeds either to arrest the Defendant, outlaw him, or serve him with a Copy of Process, pursuant to the Statutes 12 G. 1. c. 29. 5 G. 2. c. 27.

But this Court may hold Plea on Writ of Privilege issuing originally out of this Court at the Suit of any Attorney, Officer, Minister, or Clerk of the Court intitled to such Writ.

It may also hold Plea by Bill, which is in the Nature of a Petition to the Court, against any Attorney, Officer or Minister, intitled to the Privilege of the Court.

A Knight, Citizen, Burgeſs, or other Person intitled to Privilege of Parliament, may be ſued in this Court by original Bill, in manner as directed by the Statute 12 & 13 W. 3. c. 3.

This Court may, upon proper Suggestions, grant Prohibitions to keep, as well Temporal, as Ecclesiastical Courts, within their proper Bounds and Jurisdictions, without any original Writ or Plea depending; for the Common Law, which in these Cases is a Prohibition of itself, stands instead of an Original.

Actions are also removed into this Court out of inferior Courts of Record by Writ of *Habeas Corpus cum Causa*, or *Certiorari*; and out of inferior Courts not of Record by *Pone*, *Tolt*, *Recordari*, *Accedas ad Curiam*, or Writ of false Judgment.

This

## *in the Court of Common Pleas.*

3

This Court hath also Jurisdiction for the Punishment of its own Officers and Ministers, and all other Persons guilty of Contempts against the Rules and Orders of the Court.

The Court consists of a Chief Justice and three Puisne Judges, created by Letters Patent; but no one can be constituted a Judge of this Court, unless he be a Serjeant of the Degree of the Coif.

### *Officers of the Court of Common Pleas.*

THE *Custos Brevium* is the first or principal Officer of the Court of Common Pleas, and holds his Place by Grant from the Crown; the present Patentee is the Right Honorable the Earl of *Litchfield*, who executes the said Office by *Walter Baynes*, Esq; his Deputy.

*Custos Bre-  
vium.  
His Appoint-  
ment.*

The Duty of this Officer is to record and file in his Office all Original and Judicial Writs, and Inquisitions taken by virtue of any such Writs, all Posteads after Verdicts, and Fines, with the Concords signed by the Parties acknowledging the same; and the Writs of *Dedimus Potestatem* issued for taking the Acknowledgment of such Fines, with the Transcripts thereof, &c. which Fines are by him entered in a Book of the same Term the respective Writs of Covenant are returnable, and the Proclamations of such Fines are by him indorsed, upon the Captions, according to the Statute. He is also to re-

*And Duty.*

## The Attorney's Practice

cord and file all Writs of Entry and Summons, Writs of *Dedimus Potestatem* for taking Warrants of Attorney thereupon, and Writs of Seisin to support Recoveries suffered in the said Court; to make Copies and Exemplifications of the said Writs and Records when required, and to return Writs of *Certiorari*, directed to him, for the Removing any Writs or other Records into the Court of *King's Bench*.

*Prothonotaries.* There are three Prothonotaries of this Court, who hold their Offices for their respective Lives, and are admitted by the Chief Justice of the Court for the Time being. The second Prothonotary is admitted on the Nomination of the *Custos Brevium*, who, in Right of his Office, has the Appointment of the second Prothonotary. Each of the three Prothonotaries has belonging to his Office, one secondary, one Clerk of the Judgments, and one Clerk of the Dockets. The present Prothonotaries are *George Cooke, Esq;* first, or chief Prothonotary; *Richard Thomson, Esq;* second Prothonotary, and *Thomas Berret, Esq;* third Prothonotary.

*The Duty of the Chief Prothonotary.* The chief Prothonotary administers the Oaths to the Officers and Attornies of the Court; enters on Record the Patents of the Justices, and the Patents, Surrenders and Admissions of the other Officers of the Court. He enters on a Remembrance Roll the Names of all Attornies sworn in Court, and makes Certificates thereof to the

the Clerk of the Warrants, who thereby enters their Names in the Roll of Attornies. He enters all Writs of Adjournments of the Terms; he draws up the general Rules of the Court, made for regulating and settling the Practice in the Proceedings therein, and causes the same to be ingrossed and hung up in the Treasury Chamber at *Westminster*, and gives Copies thereof to the Judges, and to the other Prothonotaries, and Officers of the Court, if required, without any Fee. He administers the Oaths and Declarations taken to the Government; and keeps an alphabetical List of the Names of the Persons taking the same; and files in his Office the Certificates brought in by them; and also the Rolls on which they subscribe their Names. He has the Custody of the Court-Book, in which are entered the Names of all Causes on Demurrers, special Verdicts, and other Matters that are to be argued in Court, and of Causes that are to be tried at Bar, with the respective Terms, Number-Rolls, and Offices in which they are entered, and takes Minutes of the Judgment of the Court in all Causes argued therein.

The chief Prothonotary is also Attorney for the City of *London* within this Court, and hath from the City yearly four Yards of black Cloth to make him a Gown; and a Livery Fee of 1*l.* 13*s.* 4*d.* is paid yearly to him by the Secondaries of *London*, as Deputy-Sheriff.

*Duty of the  
three Prothono-  
taries.*

The three Prothonotaries, in Term-time, attend the Sitting of the Court at *Westminster*, for the Dispatch of such Matters as arise from Causes entered in their respective Offices, and to inform the Court of the State of such Causes, and to certify the Court in Matters of Practice when required. Each of the Prothonotaries has a public Office in one of the Inns of Court, at which they respectively attend every Afternoon, in Term-time, and out of Term every Day (Sundays and Holidays excepted) From Nine in the Morning till One or Two, and from Four in the Afternoon till Eight or Nine.

It is their Duty to enter on Record all Declarations, Pleas, Replications, and Pleadings subsequent, Demurrers, Joinders in Demurrers, and Judgments. To enter all Bills filed against Attornies and other privileged Persons, and Forejudgers thereon for want of Appearance. To sign Writs of Attachment, *Habeas Corpus*, *Procedendo*, *Certiorari*, *Venire facias*, *Subpoena*, *Scire facias*, *Capias ad Satisfaciendum*, *Fieri facias*, *Elegit*, *Habere facias possessionem*, *Habere facias Seisinam*, &c. To strike special Juries, and to sign Records of *Nisi prius*. They are to see that all common Recoveries be carefully ingrossed on Rolls of the Court, examined, docketted, and placed in their proper Offices, and the Writs belonging to the same filed with the *Custos Brevium*, and to examine all Exemplifications of such Recoveries.

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Persons committed by the Court for Contempt are examined on Interrogatories by the Prothonotaries, who make Reports thereon, and on other Matters refer'd to them by the Court, and tax Bills of Costs, and state the Debts and Costs on Bills, Bonds, Mortgages, and other Securities, on References made to them by the Court, pursuant to the Act made in the 4th and 5th Years of Queen *Anne*, for the Amendment of the Law. Stat. 4. 5 Ann. c. 16.

The Prothonotaries have the Custody of all Common and Plea Rolls, and deliver the same out, and keep an Account of the Persons Names to whom the Rolls are delivered, that they may be able to call for a Return of them, and make caret papers, certifying Defaulters, in order to a Prosecution, pursuant to several Rules of the Court. They keep an Account of all Rolls received into their Offices, after proper Entries are made thereon, and keep Doggets of all Judgments, Entries of Writs, and other Entries, which they carefully examine with the Rolls, before they are delivered into the Office of the Clerk of the Assoins, or Clerk of the Warrants, and the Writs into the Office of the Clerk of the *Custos Brevium*, which are afterwards by the said Officers, carried into the Treasury of the Court, but the Dockets remain in the Prothonotaries Offices. The Prothonotaries likewise keep Remembrance Rolls, on which all Rules made in Court are entered, and on which all Re-

cognizances of Bail, Appearances, *Scire facias's*, and *Præcipe's* taken at the Bar on Common Recoveries, are entered.

*Secondaries.*

*Their Appoint-  
ment.*

There are three Secondaries in this Court, one belonging to each Prothonotary, who has the Nomination and Appointment of such Secondary; which Appointment has been usually for the joint Lives of the Prothonotary and Secondary. The present Secondaries of the Court, are, Mr. Henry Fothergill, Secondary to George Cooke, Esq; chief Prothonotary; Mr. Henry Paramor, Secondary to Richard Thomson, Esq; second Prothonotary; and Mr. Henry Barnes, who is Secondary to Thomas Borrett, Esq; the third Prothonotary.

*And Duty.*

The Secondaries in Term-time attend the Court and the Judges in the Treasury, to read all the Records, Writings, Affidavits, Petitions, Papers, and Exhibits; to take Minutes of all Rules and Orders, and draw up the same, and take Recognizances in Court. They enter all Commitments of Prisoners, Discontinuances, and Satisfactions acknowledged upon Record, and amend Records by order of Court. They administer the Oaths to Prisoners taking the Benefit of the late Act made for the Relief of Debtors, with respect to the Imprisonment of their Persons; prepare Assignments of such Prisoners Estates and Effects, and draw up Rules for their Discharge. On Trials at Bar they

## *in the Court of Common Pleas.*

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they act as Associates, that is, call the Jury out of, and in Court, read the Record, call the Defendant, read all written Evidence, call the Jury before a Verdict given, and record the Verdict, take Minutes of all special Verdicts, and draw up the same, and make Copies thereof for the Plaintiff, Defendant, and Judges. They take an Account of all Fines, and Recoveries passed, and suffered at Bar. And in Term-time, after the Rising of the Court, attend at their Offices to draw up the Rules and Orders made by the Court, or by the Judges in the Treasury, and enter them on the Remembrance Rolls, and make Copies of them, when required. They enter all Rules to Declare, Plead, Reply, Rejoin, Sur-rejoin, Rebut, Surrebut, and join in Demurrer, and give Rules for the Attornies, and other Officers of the Court to appear to Bills filed against them. And file and copy all Affidavits, Papers, and Exhibits produced on Motions, Taxations of Costs, or otherwise, and Suggestions and Proceedings in Spiritual Courts, when Prohibitions are applied for; and copy Interrogatories and Examinations of Persons committed for Contempts. On Complaints made by the Prisoners of the *Fleet Prison* against the Warden, the Secondaries attend the Judges at such Places as they appoint, and file, read, and copy all Affidavits and Exhibits produced on such Complaints, and draw up all Orders made thereon.

There

*Clerks of the  
Judgments.*

*Their Appoint-  
ment.*

There are three Clerks of the Judgments, one belonging to and appointed by each Prothonotary. The present Clerks of the Judgments are, Mr. *John Wakelin*, Clerk of the Judgments to *George Cooke*, Esq; the chief Prothonotary. Mr. *William Luke* Clerk of the Judgments to *Richard Thomson*, Esq; the second Prothonotary; and Mr. *Thomas Newsome* Clerk of the Judgments to *Thomas Borrett*, Esq; the third Prothonotary.

*And Duty.*

It is the Duty of these Officers to draw up all final Judgments after Inquisitions taken, Verdicts obtained, or Nonsuits had at *Nisi Prius*, and on Demurrers, and Issues joined upon *Nul Tiel Record*; and to draw up and enter all Continuances necessary in the aforesaid Judgments. To draw up the Award of every *Decem Tales*, and enter the same on the Roll; to make out Writs of *Distringas Decem Tales*, and *Distringas Juratores*; and to draw up the Awards of Writs of *Elegit*, and Writs of Partition, and enter the same, with the Returns thereof, upon the Roll. To enter all Satisfactions to Judgments, when the same is done by the Order of a Judge, and not in open Court; and to exemplify any of the abovementioned Judgments, if applied for within a Year after the Signing of such Judgments. And by the Statute 4 & 5 W. & M. c. 20. they are to deliver over to the Clerk of the Effoins Notes in Writing of all Judgments entered by them

them respectively on Verdicts, Writs of Inquiry, Demurrer, and every other Judgment for Debt or Damages.

There are three Clerks of the Dockets, *Clerks of the Dockets.* one belonging to and appointed by each Prothonotary. Mr. *John Wakelin* is the present Clerk of the Dockets to the chief Prothonotary; Mr. *Thomas Buckle* to the second Prothonotary; and Mr. *William Robinson* to the third Prothonotary. *Their Appoints.*

They enter upon Remembrance all Appearances to Writs of Attachment of Privilege, Writs of *Scire Facias*, Bills, and other Process, issued out of, and filed in the Offices of their respective Prothonotaries. They deliver out to the Attornies the Rolls whereon Pleadings are entered, and put them into a Numerical Order, when brought back; and make out Papers, call'd *Caret Papers*, of such as are wanting, and the Attornies Names to whom the same were delivered, and deliver Copies thereof to the Clerk of the Warrants, and Clerk of the *Essoins*, to enable them to inform the Court thereof. They prepare Bail-Pieces or Recognizances entered into, to Attachments of Privilege, and otherailable Writs issuing out of the Prothonotaries Offices, and attend the Court, or a Judge, when such Recognizances are taken, and when such Bails are justified, or additional Bail is put in, and also, when the Defendant surrenders himself in Discharge of his Bail. They make Copies of all special Juries struck

struck by the Prothonotaries, for the Plaintiffs and Defendants; and, when required, make Copies of Bills of Costs, and Papers produced before the Prothonotaries on References, and of Reports made in Court by the Prothonotaries. They make Copies of Rules of Court from the Remembrance Rolls of Terms that are past. They also make out Certificates of Declarations not being filed according to the Rules of the Court against Prisoners, in order to their being discharged out of Custody for want of Proceeding; and also Certificates of Writs of *Recordari*, and Writs of False Judgment, not being filed according to the Course and Practice of the Court. And as Clerks to the Prothonotaries they make out Copies of all special Verdicts for the Judges, and Attornies concerned therein; and in the Absence of the Prothonotaries they perform the common Business belonging to the Prothonotaries Offices.

*Clerks of the  
Reversals.*

*Their Appoint-  
ment.*

Each Prothonotary of the Court hath a Clerk of the Reversals belonging to his Office, nominated, and verbally appointed by such Prothonotary. Mr. *John Wakelin* acts as Clerk of the Reversals to the chief Prothonotary; Mr. *Thomas Buckle* acts as Clerk of the Reversals to the second Prothonotary; and, Mr. *Thomas Newsome* acts as the Clerk of the Reversals to the third Prothonotary.

They

They draw up and enter the Reversals *And Duty.* of Outlawries, and enter the *Præcipe's* thereof on Remembrances, and draw up Certificates thereof to the Outlawry Office; and draw up and ingross the Bail-Pieces, or Recognizances, in order to such Reversals, and attend the Court and Judges therewith and make out the *Superfedeas* when necessary.

*Thomas Maidstone, Esq;* holds the Place of Clerk of the Clerk of the Treasury by parol Appointment from the Lord Chief Justice. *Treasury.* *His Appointment.*

Mr. *John Brougham* is Clerk of the Jurats, or one of the Under-Clerks of the Treasury, for the Counties of *Mid-* *Jurats, or Under-Clerks of the Treasury* *dlesex, Kent, Oxford, Hereford, Southamp-* *ton, Wilts, Somerset, Westmoreland, and* *and Treasury* *Norumberland, Cities of London, Bristol, Keeper.* *and Town of Southampton.*

Mr. *Henry Brougham* is Clerk of the Jurats, or one of the Under-Clerks of the Treasury, for the Counties of *Cornwall, Bucks, Surrey, Hertford, Cambridge, Norfolk, Leicester, Derby, York, Bedford, Huntingdon, Mon-* *mouth, Warwick, Cumberland, Berks, Glo-* *cester, Salop, Dorset, Northampton, Not-* *tingham, and Town of Nottingham, Coun-* *ties of Suffolk and Sussex, Cities of York,* *Coventry, Norwich, Towns of Newcastle* *upon Tyne, Kingston upon Hull, and Bo-* *rough of Leicester.*

And Mr. — *Brooks* is Clerk of the Jurats, or one of the Under-Clerks of the Treasury

Treasury for the County of *Devon*, City of *Exeter*, County of *Lincoln*, and City of *Lincoln*, County of *Worcester*, and City of *Worcester*, Counties of *Essex*, *Stafford*, *Rutland*, and City of *Glocester*.

*Their Appoint-  
ment.*

The Clerks of the Jurats, or under-Clerks of the Treasury, are admitted by the Lord Chief Justice of the Court, for the several Counties, Cities, and Towns in their respective Divisions, and hold their Places for their Lives; Mr. *George Stubbs* is the Treasury-Keeper, and holds his Place also by the parol Appointment of the Lord Chief Justice.

*And Duty.*

The Duty of the Clerk of the Treasury is to have the Care and Custody of the Treasury of the said Court, which doth contain the Records of the same Court of all Common Recoveries, Entries of the Money which the King hath upon Fines; Judgments and Issues, with the Pleadings and Verdicts thereon, Inrolments of Deeds, Warrants of Attorney, Filacers, and Exigenters Rolls, containing the Entries of Writs issuing out of their respective Offices, from the first Year of King *Henry* the Eighth inclusive, down to the present Time, bound up in distinct Bundles, and digested in their due Order and Course of Time. He is also to sign all Copies taken from the Rolls, and all Records of *Nisi Prius* in the said Court, and to keep a File of all Rules and Orders relating to the said Rolls. And no Exem-  
plications,

plifications, (except Exemplifications of Fines and Common Recoveries of the present or next precedent Term) are to be sealed, unless they are first signed and examined by the Clerk of the Treasury.  
*Mich. 1654.*

The Duty of the Clerks of the Jurats is to make and examine Copies of the said Records in their respective Counties; and to amend Records on Receipt of Orders for that Purpose; to write and examine the Jurats of the Records of *Nisi Prius* in the said Court, and to exemplify Verdicts, Judgments, and old Recoveries.

The Duty of the Treasury-Keeper is to bind up the Records in distinct Bundles every Term, and keep them in their proper Order and Series of Time, and shew them when required.

The present Filacers of this Court, are, *Filacers.*

*William Hester* for the Counties of *Southampton, Wilts,* and Town and County of *Southampton.* The Office is executed by *Mr. Coombe, jun.* in *Grange-Court* in *Cary-Street.*

*Thomas Ward* in *Staple's Inn,* for the Counties of *Westmoreland, Cumberland, Northumberland,* and Town and County of *Newcastle upon Tyne.*

*Henry Allen* for the County and City of *Lincoln.* The Office is executed by *Mr. Haberfield,* at N<sup>o</sup>. 11. in *Garden-Court, Staple's Inn.*

*William*

*William Boycott* for the Counties of *Essex* and *Hertford*; His Deputy is *Mr. Barbor* in *Lyon's Inn*.

*John Staples*, at N<sup>o</sup>. 2. in *Essex Court* in the *Middle Temple*, for the Counties of *Gloucester*, *Worcester*, *Hereford* and *Cornwall*, and the Cities of *Gloucester* and *Worcester*.

*Sir Biby Lake* for the County and City of *Tork*, and County of the same City, and Town of *Kingston upon Hull*, and County of the same Town. The Office is executed by *Mr. Lake* at N<sup>o</sup>. 4. in *Elm-Court* in the *Middle Temple*.

*Mr. Whitfield* at N<sup>o</sup>. 25. in the Old Buildings *Lincoln's Inn*, for the Counties of *Surrey*, *Sussex*, *Kent* and the City of *Canterbury*.

*John Martin* for the Counties of *Somerset*, *Dorset*, City of *Bristol* and Town of *Pool*; His Deputy is *Mr. Bold*, in *Essex-Street*.

*Mr. Hancock* for the Counties of *Bedford*, *Berks*, *Buckingham* and *Oxford*. His Deputy is *Mr. Collier* at N<sup>o</sup>. 12 in *Staple's Inn*.

*Robert Eyre*, Esq; for *London* and *Middlesex*. The Office is executed by *Mr. Grainger* at N<sup>o</sup>. 3. near the Chaple in *Lincoln's Inn*.

*John Biscoe* for the Counties of *Salop*, *Stafford*, *Northampton* and *Rutland*, and City of *Litchfield*. The Office is executed by *Mr. Wilmer*, at N<sup>o</sup>. 9. in *Staple's Inn*.

*George Green*, N<sup>o</sup>. 8. *Staple's Inn*, for the County of *Norfolk*, City of *Norwich*, and County of the same City.

Mr. Huske for the County of Suffolk. His Deputy is Mr. Moxon, at N<sup>o</sup>. 13. in Bernard's Inn.

Joseph Dobbins, in Castle-Tard, near Holborn, for the County of Devon, City of Exeter, and County of the same City.

William Ward, for the Counties of Cambridge and Huntingdon; the Office is executed at Mr. Green's Chambers, N<sup>o</sup>. 8. in Staple's Inn.

John Whitlock, N<sup>o</sup>. 11. in Lincoln's Inn Square, for the Counties of Derby, Leicestershire, Nottingham, Warwick, City of Coventry, and Town of Nottingham.

Francis Gwynn, Esq; for the County of Monmouth. The Office is executed by Mr. Fisher, in Lyon's Inn.

The several Persons above-named (except the Filacer for Monmouth, *vide postea*, fol. 26.) have been appointed, and are seised of their said Offices by Grants from the respective Chief Justices of the Court for the time being, To hold for their natural Lives as their Freehold.

Their Duty is to make out Mesne Pro- cesses upon original Writs returnable in this Court.

They also enter Appearances, and file and enter Bails, and attend the Judges or the Court on putting in, and justifying Bail, and on Defendants surrendering in Discharge of their Bail; and also take Affidavits of Debts in order to hold the Defendants to Bail, and Affidavits of the Service of Process; and file Bills brought

against Persons having Privilege of Parliament, and make out the subsequent Process thereon before Appearance.

*Clerk of the  
warrants, &c.*

*His appoint-  
ment.*

*And duty.*

The Clerk of the Warrants, Inrolments, and Estreats is *Edward Eyre, Esq;* who was admitted into the said Office by Sir *Robert Eyre, Knt.* formerly Lord Chief Justice of this Court.

He files all Warrants of Attorney upon Judgments and Issues; and all Warrants in Outlawries, and Writs of Covenant; and on receiving the Warrants of Attorney he stamps all Paper Judgments, *Pluries Capias*, and Writs of Covenant, and enters *Ne Recipiatur* against filing such Warrants.

All the common Rolls, or Records of Judgments, and Issues on Trials by *Nisi Prius* of every Term, are delivered by the several Prothonotaries into this Office, the latter End of the subsequent Term, that the Clerk of the Warrants may inspect the same, and estreat all Fines and Amerciaments upon Sheriffs, and others, that he shall find amongst the said Records, and the Rolls are delivered by him to the Clerk of the Effoins. Every Deed acknowledged in this Court is inrolled in this Office, and docketted in Books for the Benefit of Searches, and then delivered to the Clerk of the Effoins. The King's Silver Rolls, or Post-Fines of every Term are brought the subsequent Term to this Office, and are estreated; and the last Day of every Term the Clerk of the Warrants

rants delivers the Estreat to the Puisne Judge of the Court, and attends him to the Court of *Exchequer*, when the said Judge delivers the Estreats to the Lord Chief Baron, and the Clerk makes Oath before the Court, that they are rightly estreated and examined. All Common Recoveries are brought to this Office from the Prothonotaries, and are docketted for the Benefit of Searches. There is a Roll also kept in this Office of the Names of all Persons that are admitted Attornies of this Court, with an Account by what Judge each Attorney was admitted, and at what Time and Place, and the Place of his Abode. This Roll is wrote over every *Michaelmas* Term, in order to keep an Account of all Forejudgers against Attornies that are sued for Debts, or otherwise, and of their being restored again to their Privilege by Rule of Court, or Judge's Order. And all Persons have Recourse to the Roll without Fee or Reward. He also stamps Attachments and Writs of Privilege for Attornies. The Clerk of the Warrants is also one of the Officers appointed by the Statute for the publick Registering of Deeds, &c. in the County of *Middlesex*.

The Office of Clerk of the Effoins is in *Clerk of the* the Appointment of the Lord Chief Ju- *Effoins*.  
stice, and has usually been granted for *His Appoint-*  
life. The present clerk is Mr. *Thomas ment.*  
*Clendon.*

Essoins are entered in this office in all real actions, and other actions, wherein, by the practice of the court, essoins lie; and in case the defendant doth not essoin by the time limited by the rules of the court, the plaintiff may enter in this office a *Ne Recipiatur* essoin. And after an essoin is cast by the defendant, it is the plaintiff's business to adjourn the essoin, in default whereof, and a rule being given for that purpose, the defendant may sign a *Non Pros*; which rule and *Non Pros* are given in this office on rolls kept for that purpose.

In this office all judgments in the court of *Common Pleas* are docketted, pursuant to Stat. 4 & 5 *W. & M. c. 20.* and all rolls belonging to the several officers of the said court, are mark'd, number'd, and deliver'd out to them; and when the proper entries are made thereon they are returned into this Office, and carried by the said clerk of the essoins to the treasury at *Westminster*, and there bound up in proper bundles. He also provides parchment for the said rolls, and the chief justice of the court for the time being pays him for the same.

*Clerk of the  
Juries.  
His Appoint-  
ment.*

The office of the clerk of the juries is in the gift and nomination of the *Custos Bre- vium* for the time being. The present clerk is Mr. *Edward Bulstrode*.

*And Duty.*

The duty of this officer is to make out writs of *Habeas Corpora Juratorum*, for trials

trials of issues in *London* and *Middlesex*, and at the assizes in the country.

The return office and office of inrolment *The return of* of writs for fines and recoveries, is in the *the, & office* nomination of the three puisne judges of *of inrolment of* this court, by virtue of an act of parlia- *writs for fines* ment made in the 23d year of the reign of *and recoveries.* queen *Elizabeth*. Mr. Henry Barnes is the *Officer's ap-* present clerk of this office. *pointment.*

By Statute 23 *Eliz. c. 3. §. 1.* Every *His duty as* writ of covenant, and other writ, where- *clerk of the* on any fine shall be levied, the return *inrolment of* thereof, the *Dedimus Potestatem* for ac- *the.* knowledging such Fine, the return there- of, the concord, note, and foot of every such fine, the proclamation, and king's silver; and every original writ of entry in the *Post*, or other writ whereon any common recovery shall be suffered, or passed, the writs of summons *ad Warrantizandum*, every warrant of attorney to be had, as well of every demandant and tenant, as vouchee, that shall be extant, and being, may, upon request of any person, be inrolled, and the inrolment shall be of as good force in law, for so much as shall be inrolled, as the same being extant ought to be.

§. 6. There shall be an office for the inrolment aforesaid, which shall be an office for ever, called *the office of inrolment of writs for fines and recoveries*; and the justices of the *Common Pleas* (other than the chief justice) shall have the care and charge of the inrolments aforesaid, and shall enjoy

the said office, and the disposition thereof, and carefully see to the execution thereof, and in consideration of their charges, pains, &c. shall have the sums following, viz. for the inrolment and examination of every fine, and the parts thereof, 6s. 8d. For the inrolment of the several parts of a recovery, and examination thereof, 6s. 8d. For the exemplification of the inrolment of a fine 5s. For the exemplification and return of every writ of entry, summons *ad Warrantizandum*, and warrants, 5s. For the search of the rolls for one year 4d. And for the copy of one sheet of paper, containing fourteen lines, 4d.

*As clerk of the  
Return Office.*

Mr. Barnes returns all writs of covenant, entry, summons, and seisin, in the names of the sheriffs of the several counties, cities, and vills in *England*; and makes regular entries in books, provided at his own charge for that purpose, of the counties, cities, vills, parties names, and places where the premisses lay which are contained in such writs; and also the several returns of all such writs, except writs of covenant, together with the names of the attornies concerned in prosecuting the same, according to the antient method used in the said office.

But the applying for inrolments and exemplifications in this office hath been disused many years.

*Clerk of the  
king's silver.*

The clerk of the king's silver is *William Daw, Esq;* who was admitted into this office

office by Sir Peter King, late lord chief justice of this court, on the surrender of *His appointment.*  
Henry Ludlow, Esq;

This officer claims it to be his duty, to *And duty.*  
inspect and see that all fines passed in his  
his office have regularly passed through the  
several offices, conformable to the usage  
and custom of the court; to enter the  
whole of all fines, together with the post-  
fine paid thereon, into books which re-  
main in the office as records, for the be-  
nefit of such as have occasion to search  
for fines; and also to indorse the post-fines  
on the writs of covenant, and ingross the  
entries of all fines on record, with the post-  
fines thereof; which records are estreated  
into the court of *Exchequer*, in order to  
collect the post-fines. He is also to stop  
all such fines, against the passing of which  
caveats are entered, and file such caveats,  
with all rules of courts, judges orders,  
and affidavits of the cognisors being alive,  
where captions have been taken above  
twelve months before the fines are brought  
to his office.

All caveats, and orders for stopping any  
fines, shall be renewed every term, and  
copies thereof left with the clerk of the  
king's silver, for which he is to demand  
only his antient fee of 3 s. 4 d. the term.  
And in default thereof all caveats that shall  
not be so renewed shall lose their force and  
effect. *Pascb. 29 Car. 2.*

Where a rasure in the day or year shall  
appear in the caption of a fine, it shall not

pass this office without an *Allocatur* from a judge. *Pasch. 9 Anne.*

*Chirographer.*

*His appointment.*

The office of Chirographer was by letters patent granted by his present majesty to Mr. *John Lightfoot* for life, under whom Mr. *Joseph Biscoe* is appointed secondary to officiate in the said office. There is a register and record-keeper belonging to the said office, and the Chirographer appoints certain clerks, for the several counties in *England*.

*And duty.*

The Chirographer draws up, and makes out, from all parts of the fine, the final concord, properly called the fine itself, and ingrosses a record thereof, called the Chirograph, or foot of the fine; and one other record thereof, called the note of the fine; and from the said Chirograph, or foot of the fine, the Chirographer's clerks ingross two indentures, one whereof is intended for the conusee, and the other for the conusor, each of which records and indentures contain the whole of the fine, and are both examined, with all the parts of the fine, by the Chirographer's secondary; and the parts of the fine, and also the records, are openly read and proclaimed in court the same term the fine is brought into the Chirographer's office, and also in the three following terms, the Chirographer enters every fine in a publick book, and upon rolls of parchment which are hung up in the court of *Common Pleas* on the first day of the next term, after the fine is brought into the said

said office, and which continue hung up in the court during the whole term, for every person's inspection. The same fines are also entered in another book kept by the Chirographer's register, for publick inspection, and after proclamation of such fines he ingrosses the four proclamations on each Chirograph, and delivers the same with the *Dedimus* and concord of the fine to the *Custos Brevium*, to be filed by him; and files the writ of covenant, and the other records of the fine in his own office.

Stat. 23 *El. c. 3. §. 7.*

The office of Exigenter is executed by *Exigenter.* Mr. ———, but under what appointment I have not been able to learn.

It is his duty to make exigents and *His duty.* proclamations upon *Pluries Capias's*, in order to proceed to the Outlawry.

The office of clerk of the *Superfedeas* Clerk of the to the exigent is executed by Mr. Robert *Superfedeas to the Exigent.* Morris, who was admitted into this office *His appointment.* by grant or deputation from his father Mr. Henry Morris, to hold to him and his heirs for ever.

It is his business to sign all writs of *Subpoena* And duty. *perfedeas* to *Exigents* *quia improvide, &c.* in the said court, to prevent a person's being outlawed or waived, against whom an exigent has issued.

The office of clerk of the outlawries is *Clerk of the outlawries.* incident to the office of his majesty's Attorney General, and always executed by *His appointment.* some person appointed by the Attorney General for the time being. The present clerk

clerk of the outlawries is Robert Salkeld, Esq;

*And duty.*

It is the duty of this officer to make out all writs of *Capias Utlagatum*, sequestrations of ecclesiastical benefices in all personal actions in the said court, after the return of the exigent, a short note whereof is entered in a book kept for that purpose, expressing the plaintiff's and defendant's names, and the defendant's addition, with the cause of action and return. And therein are likewise made entries of all reversals of outlawries, and the time thereof, in which books all persons may search for outlawries, and see which are in force or reversed, and have certificates thereof, in order to discharge a seizure of lands made by virtue thereof; or satisfy any court or person touching the same, and may have a copy of the *Præcipe* of any outlawry, to plead to, and reverse the same. Inquisitions taken on special writs of *Utlagatum* are transmitted into this office, and are here exemplified upon rolls signed by the clerk of the outlawries, and then carried into the office of the king's remembrancer of the court of *Exchequer*, and there filed of record, and the inquisitions themselves and writs of exigent are filed with the *Custos Brevium*.

*Prothonotary,  
&c. for Monmouth.*

*His appointment.*

The offices of prothonotary, secondary, clerk of the judgments, clerk of the dockets, exigenter, clerk of the juries, filacer and clerk of the reversals for the county of *Monmouth*, were by his late majesty king  
*William*

*in the Court of Common Pleas.*

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*William III.* by letters patent under the great seal, granted to *Francis Gwynn, Esq;* who executes the same by *Mr. Richard Fisher* his deputy.

He does the same duty as the like officers in this court do for the rest of the counties in *England.*

*And duty.*

The most noble *William* duke of *Cleveland* is seised in fee-tail of this office, and claimeth the receipt of the revenue arising for the sealing of writs, exemplifications, and other things whatsoever sealed with the seal of this court. *Mr. Robert Atkinson* is his grace's deputy, to take care of the said office, and receive the profits thereof.

*Seal office.*

*His appointment.*

*And duty.*

The office of clerk of the errors is in the nomination of the chief justice of the court for the time being, and has been usually granted by verbal appointment to hold during the pleasure of the chief justice. *Mr. Richard Brumker* is clerk of the errors to the right honorable the present lord chief justice.

*Clerk of the errors.*

*His appointment.*

The clerk of the errors, as deputy or clerk to the lord chief justice, has the allowance and receipt of all writs of error brought upon judgments given by this court, and gives certificates thereof, and marks the judgment roll, that a writ of error is allowed, and makes out writs of *Superfedeas* when required, and enters and inrols recognizances of bail taken on writs of error, and makes out writs of *Scire facias* thereon, and gives rules for putting in, and justifying bails, and gives certificates

*And duty.*

cates of the neglects thereof; and also gives rules for plaintiffs in error to certify the records, and makes transcripts of the records and judgments, and transmits the same into the court of *King's Bench*, and enters *Mittiturs* on the rolls, importing that such records are removed into the *King's Bench*, and signs, and enters *Non-Proffes* for defaults of plaintiffs in error, certifying their records. He hath also the allowance and return of all *Certiorari's* directed to the lord chief justice, for certifying records from this court into any other.

*Judges clerks.*

The judges clerks are verbally appointed by their respective judges, to continue during pleasure.

*And duty.*

The duty of these clerks is to ingross bail-pieces on writs of *Habeas Corpus*, and indorse commitments on the back of the return, and to draw up surrenders of persons surrendering themselves in discharge of their bail, and to ingross bail-pieces on writs of *Certiorari*, to enter all such bail-pieces, as likewise to enter the commitments and surrenders in books kept for that purpose (which books persons are at liberty to inspect without fee or reward.) To take recognizances of bail acknowledged before their respective judges; to read over to the parties the contents of all fines and warrants of attorney, for suffering common recoveries, and admissions of infants to sue or defend by prochien amy, or guardian, and to write the captions thereon,

on, to ingross the returns of writs of *De-  
dimus Potestatem* directed to their respec-  
tive judges; to write the *Allocatur* of a fine  
taken before commissioners upon oath of the  
due caption thereof, and to write the cap-  
tions of deeds acknowledged in or out  
of court to be inrolled, and to administer  
the oaths to persons making affidavits, or  
bail justifying, and to draw up summonses  
and orders made by their respective judges.

The clerks to the lord chief justice  
make out commissions for taking affidavits  
and special bails, and file the approbations  
signed by the puisne judges, in order for  
such commissions, and enter the names of  
the commissioners so appointed in a book  
kept for that purpose.

The office of associate at *Nisi Prius* in *Associate at  
London and Middlesex* is in the appoint- *Nisi Prius in  
London and  
Middlesex.*  
ment of the lord chief justice, and has  
been generally granted by parol, to hold *His appoint-  
ment.*  
during pleasure only. The present asso-  
ciate is Mr. *Thomas Lloyd.*

The duty of this officer is to wait on *And duty.*  
the lord chief justice, when he appoints  
the days of sittings at *Nisi Prius*, and to  
make copies thereof, which are stuck up  
in the prothonotaries offices, and in *West-  
minster Hall*, to attend the court during  
the sittings, and draw out of the box the  
names of the jurors, and record their ap-  
pearances and defaults, and return the  
same. To read the record, and all writ-  
ten evidence, and to take down the mi-  
nutes of facts, and enter the records in a  
book;

book; record verdicts; return *Posseas*, and draw up orders of the court of *Nisi Prius*, and make copies for each side, to attend with the jury to take a private verdict, and draw up and enter the same on the *Posseas*, and make out copies thereof.

*Marshal at Nisi Prius in London and Middlesex. His appointment.*

The office of Marshal at *Nisi Prius* in London and Middlesex is also in the nomination of the lord chief justice, and has been time immemorial granted by parol appointment, to hold during the pleasure of the lord chief justice. The present marshal is Mr. *William Thory*.

*And duty.*

This officer is to attend the lord chief justice of this court, at all such times as his lordship sits to try issues depending in this court, by writ of *Nisi Prius*, either in the county of *Middlesex* or city of *London*. He enters the names of all causes set down to be tried for the said city and county, in a book kept and provided by him for that purpose, which he carries down with him every day in term-time, to *Westminster*, that all attornies may have recourse to it to enter their causes, to inspect and see what causes are entered, and at proper times to enter *Ne Recipiaturs*; and in the afternoon this book is kept at the lord chief justice's chambers for the same purpose. During the time appointed for trials in the said causes he personally attends the court during the whole time of their sitting, to receive the records and writs, and mark them. The marshal first calls the name of the cause, and then de-

livers up the record to the lord chief justice, and sits under him, to be ready, upon all occasions, to receive his commands, to receive and withdraw records and writs, and to mark any that are left untried, as *Remanets* to be tried at the next sitting.

The office of cryer at *Nisi Prius* in *Cryer at Nisi Prius in London and Middlesex* is also in the gift of the lord chief justice for the time being, and has been usually granted by parol appointment, to hold during pleasure. *Mr. Parsons* is cryer to the present lord chief justice. *His appointment.*

His duty is to call the jurors, and swear them, and all witnesses produced on such trials. *And duty.*

*Hennage Walker, Esq;* Hereditary Proclamator of this court, granted to *John Walker, Esq;* the office of mareschal proclamator, and barrier of this court, with all fees, &c. to hold to him and his heirs for ever. There are four persons who act as cryers of the court, one of which is also court-keeper, and another porter of the court: Which cryers, court-keeper, and porter, are deputies to the chief proclamator. *Chief proclamator. His appointment.*

The duty of the proclamator and barrier is by himself, or deputies, to attend the court of *Common Pleas* at *Westminster*, and make proclamations, &c. *And duty.*

The cryers are appointed by deputation from the chief proclamator. *The four Cryers. Their appointment.*

Their

*And duty.*

Their duty is to attend the court, to administer the oaths to juries, witnesses, bails, and persons making affidavits; to hand rules, affidavits, &c. from the serjeants to the proper officers, to bring records into court as they are wanted, to call attornies on bills being filed against them, to take recoveries from the bar, and get them entered in the proper prothonotaries offices to which they belong, proclaim the effoins on the return-days, make proper adjournments, &c.

*Court-keeper.**His appointment.**And duty.*

The court-keeper is appointed by the chief proclamator.

His duty is to take care of the court, and that the tapestry and cushions be kept clean, the court washed, matted and cleaned, and to take care of the acts of parliament, and other books made use of in court.

*Porter of the court.**His appointment.**And duty.*

The porter of the court holds his place by the appointment of the chief proclamator.

His duty is to attend the judges in court, hang out the fines every day, take care of them; and to do other business as occasion requires.

*Warden of the Fleet.**His appointment.**And duty.*

The warden of the *Fleet* prison is *John Eyles*, Esq; appointed by letters patent to hold during pleasure.

His duty is to receive, and have the custody of all prisoners committed by this court to the *Fleet* prison.

*Clerk of the papers and rules of the Fleet Prison.*

The present clerk of the papers and rules of the *Fleet* prison is *Mr. John Cotton*, who

who holds his place by grant from *Thomas Bambridge*, and *Doughall Cutbbert* during his life, if the said *Thomas Bambridge* and *Doughall Cutbbert* shall so long live. *His appointment.*

It is his business to receive and enter, *And duty.* in books kept for that purpose, the commitments of prisoners committed to the said prison by this court, to enter declarations delivered to the turnkey of the prison against prisoners, and to enter and file the discharges of prisoners, and to give certificates thereof, and return writs of *Habeas Corpus*, and other writs directed to the warden, and enter the same in a book kept for that purpose, and also to give certificates of charges against prisoners, and certificates of day-rules granted to prisoners by the court.

There are two tipstiffs attendant on this court who are admitted by deputation from the warden of the *Fleet*. *Tipstiff. Their appointment.*

They attend the judges whilst sitting in court, and in the afternoon at their chambers, and out of term they attend there morning and afternoon. One of them also attends the chief justice at the sittings of *Nisi Prius* at *Westminster* and in *London*, and on the circuits. *And duty.* Their duty is to receive all prisoners committed in court, or at a judge's chambers, and from thence to carry them to the *Fleet* prison, and deliver them to the turnkey there; and also to bring up prisoners to the court, or before a judge, on

a *Habeas Corpus*, or rule of court for that purpose.

*Commissioners for taking affidavits concerning matters in this court to be appointed by the judges.*

The judges of this court, or any two of them, whereof the chief justice to be one, shall and may, by one or more commission or commissions, under the seal of this court, from time to time, as need shall require, impower what and as many persons as they shall think fit and necessary in all and every the several shires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every such affidavit and affidavits as any person or persons shall be willing and desirous to make before any of the persons so impowered, in or concerning any cause, matter, or thing depending, or any wise concerning any of the proceedings in the said court, as masters of *Chancery* in extraordinary do use to do. And any judge of assize in his circuit may take and receive any affidavit or affidavits as any person or persons shall be willing and desirous to make before him in or concerning any cause, matter or thing, depending or in any wise concerning any proceedings in the said court: Which said affidavits taken as aforesaid, shall be filed and then read and made use of in the said court to all intents and purposes as other affidavits taken in the said court now are; and all and every affidavit and affidavits taken as aforesaid, shall be of the same force as affidavits taken in the said court now are; and all and

*Any judge of assize in his circuit may take such affidavit.*

*Affidavit to be filed, and then read and used, &c.*

and every person and persons forswearing <sup>*Penalty of per-*</sup>  
him, her or themselves in such affidavit <sup>*jury in such af-*</sup>  
or affidavits, shall incur and be liable unto <sup>*fidavits.*</sup>  
the same penalties as if such affidavit or  
affidavits had been made and taken in open  
court. *Stat. 29 Car. 2. c. 5. §. 2.*

For the taking of every such affidavit, <sup>*Fee for taking*</sup>  
the person or persons so impowered and <sup>*such affidavits.*</sup>  
taking the same, shall for so doing receive  
only the sum or fee of 12 *d.* and no more.  
*Same Stat. §. 3.*

The justices of this court or any two <sup>*Commissioners*</sup>  
of them, whereof the chief justice to be <sup>*for taking bails*</sup>  
one, may by one or more commission or <sup>*in court to be*</sup>  
commissions under the seal of this court, <sup>*appointed by*</sup>  
from time to time, as need shall require, <sup>*the judges.*</sup>  
impower such and so many persons, other  
than common attornies and solicitors, as  
they shall think fit and necessary in all and  
every the severall shires and counties with-  
in the kingdom of *England*, dominion of  
*Wales*, and town of *Berwick upon Tweed*,  
to take and receive all and every such re-  
cognizance or recognizances of bail or  
bails as any person or persons shall be wil-  
ling and desirous to acknowledge or make  
before any of the persons so impowered  
in any action or suit depending in this  
court, in such manner and form, and by  
such recognizance or bail-piece as the ju-  
stices of this court have used to take the  
same, which said recognizance or recog- <sup>*Recognizances*</sup>  
nizances of bail or bail-piece so taken as <sup>*to be trans-*</sup>  
aforesaid shall be transmitted to some or <sup>*mitted to a*</sup>  
one of the justices of this court, who upon <sup>*judge of the*</sup>  
<sup>*court.*</sup>

*Affidavit of  
the due taking,  
&c.*

affidavit made of the due taking of the recognizance of such bail or bail-piece, by some credible person present at the taking thereof, such justice shall receive the same upon payment of such fees as have been usually received for the taking of special bails by the justices clerks, and other the officers of this court; which recognizance of bail or bail-piece so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse*, before any of the said justices; for the taking of every which recognizance or recognizances of bail or bail-piece, the person or persons so impowered shall receive only the sum or fee of 2s. and no more. *Stat. 4 W. 3 M. c. 4 §. 1.*

*Judges to make  
rules for justifying, &c.*

The justices in this court shall make such rules and orders for the justifying of such bails, and making the same absolute, as to them shall seem meet; so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in this court to justify him or themselves: But the same may and is hereby directed to be determined by affidavit or affidavits taken before the said commissioners, who are hereby impowered and required to take the same, and also to examine the sureties upon oath touching the value of their respective estates, unless the cognizor or cognizors of such bail do live within the cities of *London* and *Westminster*, or within ten miles thereof. *Same Stat. §. 2.*

*The same to be  
by affidavit  
taken before a  
commissioner.*

*Unless, &c.*

Any

Any judge of assize in his circuit may take and receive all and every such recognizance and recognizances of bail or bails, as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall (without oath) be received in manner as aforesaid, upon payment of the usual fees. *Any judge of assize in his circuit may take such bail.* Same Stat. §. 3.

Every person who shall acknowledge, or procure to be acknowledged, any fine, &c. recognizance or recognizances, bail or bails, &c. in the name of any other person not privy or consenting to the same, and being thereof convicted, shall be adjudged to be a felon, and suffer death, &c. without benefit of clergy: Stat. 21 Jac. 1. c. 26. 1 H. H. P. C. 696. Et vide Stat. 4 W. & M. c. 4. §. 4. Whereby personating another before those who have authority by that act to take bail, so as to make him liable to the payment of any sum of money in that suit or action, is made felony. *Acknowledging bail in the name of any other not privy or consenting, felony.*

*Attornies of the Court.*

**B**Y the statute of the second of Geo. 2. No one to act as an attorney, sue out any process, or defend any action in this court, unless he shall have been bound by contract in writing to serve as a clerk for five years to an attorney duly admitted, as by the statute is directed, and for the said term of five years shall have continued in such

service, and then be examined, sworn, admitted and inrolled.

*If his master shall die, or the contract be vacated, before the five years are expired, then to serve the remainder of the five years with another attorney.*

If any attorney, with whom any person shall be bound by contract in writing to serve as aforesaid, shall die before the expiration of such five years; or if such contract shall by mutual consent be vacated, or such clerk be legally discharged by rule or order of court before the expiration of such five years, then if such clerk shall by contract in writing serve as a clerk to some other attorney, admitted as aforesaid, during the remainder of the said five years, such service shall be as effectual as if he had served five years to the person to whom he was originally bound. *Same Stat.*

*Judges to examine his fitness and capacity before admission.*

The judges, before they admit such person, are to inquire touching his fitness and capacity, and if thereby satisfied, and not otherwise, are to administer to him, in open court, the oath after-mentioned, and cause him to be admitted an attorney, and his name to be inrolled, without fee or reward, except 1s. for administering the oath. *Same Stat.*

*The oath.*

I *A. B.* do swear, That I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability.

*So help me God.*

*A Quaker on taking his solemn affirmation, may be admitted an attorney.*

Any person being one of the people called Quakers, having served a clerkship with an attorney or solicitor, and being qualified as by statute 2 Geo. 2. is required, may,

may, on taking his solemn affirmation instead of the oath by the said act directed, before such judges, and others who are to administer the said affirmation, be admitted and inrolled as an attorney or solicitor, as if he taken the said oath. *Stat. 12 Geo. 2. c. 13. §. 8.*

The clerk of the warrants of the *Common Pleas* is, without fee or reward, to inrol the name of every person who shall be admitted an attorney of this court, pursuant to this act, and the time when admitted, in an alphabetical order, in rolls or books to be provided for that purpose, to which all persons shall have recourse without fee or reward. *Stat. 2 Geo. 2.*

No attorney shall have more than two clerks at one and the same time, who shall be bound by contract in writing. *No attorney to have more than two clerks at one time. Same Stat.*

The prothonotaries of this court may have three clerks, and at one and the same time, and no more; and such clerks having served five years may be admitted, &c. in the same manner as any person may, who shall have served a clerkship to a sworn attorney for five years. *Same Stat.*

Any person sworn, admitted, and inrolled an attorney of this court, with consent in writing, and in the name of any attorney of any other court of record at *Westminster, &c.* may sue out any writ, or commence or defend any action in such court, notwithstanding such person be not sworn

## The Attorney's Practice

sworn or admitted an attorney in such court. *Same Stat.*

*Attorney permitting those that are not, to act in his name, disabled to practice.*

If any sworn attorney of this court shall knowingly and willingly permit or suffer any other person to sue out any writ, or commence or defend any action, in his name, not being a sworn attorney or a sworn solicitor in *Chancery*, &c. and shall be thereof convicted, he shall, from the time of such conviction, be disabled to practice, and his admittance be void. *Same Stat.*

*Attorney may be admitted a solicitor.*

A sworn attorney of this court may be sworn, admitted and inrolled a solicitor in all or any of the courts of equity without any fee for the oath, or any stamp, if the master of the rolls, &c. shall, on examining, be satisfied that such attorney is duly qualified to be so admitted. *Same Stat.*

*No attorney to commence any action for fees, &c. until a month after a bill delivered and signed.*

No attorney of this court shall commence any action for recovery of any fees, charges, or disbursements, until one month after he shall have delivered to the party to be charged therewith, or left for him at his dwelling-house, or last place of abode, a bill of such fees, charges and disbursements, in a common legible hand, and in the *English* tongue, (except law terms, and the names of writs) and in words at length (except times and sums) subscribed with the proper hand of such attorney [since by *Stat. 12 Geo. 2.* a bill may be wrote with such abbreviations as are commonly used in the *English* language;]

guage]; and upon application of the party chargeable by such bill, or any other in that behalf authorised, unto any judge of the court, &c. where the business, or the greatest part thereof, in amount or value was transacted; and upon submission of the party, or other person authorised as aforesaid, to pay the whole, that upon taxation shall appear due to such attorney, the judge, &c. is required and impowered to refer the bill, and the whole of such attorney's demands thereupon (although no action be depending touching the same) to be taxed, without any money being brought into court. And if the attorney, having due notice, shall refuse to attend such taxation, the officer may proceed *ex parte* (pending which reference no action shall be brought); and upon such taxation the party shall forthwith pay to the attorney the whole that shall be found due, and in default be liable to an attachment or process of contempt, or other proceeding at the election of the attorney. And if upon such taxation it shall be found, that such attorney has been overpaid, then the attorney shall forthwith pay to the party all such money as the officer shall certify to have been so overpaid; and in default shall in like manner be liable to an attachment, or process of contempt, or other proceeding, at the election of the party. And the court is to award costs of taxation according to the event thereof, (*viz.*) if the bill taxed be less by a sixth part,

*And on application of the party chargeable by such bill.*

*And submission to pay what shall appear due on taxation.*

*The bill to be refer'd to be taxed.*

*Without bringing money into court.*

*No action to be brought pending the reference.*

*On taxation the party to pay what shall be found due.*

*And if attorney found to be over-paid;*

*Then to refund.*

*If bill taxed  
be less by a  
sixth than bill  
delivered, the  
attorney to  
pay the costs of  
taxation, aliter  
at the discretion  
of the court.*

*Not to extend  
to any bill of  
fees between  
one attorney  
and another.*

*Nor to convey-  
ancing business.*

*After an at-  
torney's death  
his bill not to  
be taxed.*

*Of application  
to tax an at-  
torney's bill.*

part, than the bill delivered, the attorney is to pay the costs; if not less by a sixth part, the court at discretion shall charge the attorney or client according to the reasonableness or unreasonableness of the bill. *Same Stat.*

Nothing in the said act contained shall extend to any bill of fees, charges and disbursements, due from one attorney or solicitor to any other attorney or solicitor, or clerk in court, but every such attorney, solicitor or clerk in court, may use such remedy for recovery of his fees, charges and disbursements, against such other attorney or solicitor, as he might have done before the making the said act. *Stat. 12 Geo. 2.*

An attorney's bill for conveyancing business only, is not liable to be taxed otherwise than by a jury upon a *quantum meruit*.

After an attorney is dead his bill is not liable to be taxed.

The court will not order that an attorney shall deliver his bill, and that the same shall be taxed, on one and the same motion, they being distinct matters, and the latter part may prove fruitless; the bill may be reasonable, and no occasion to tax it; the motion must be for the attorney to deliver his bill, and then, if there be occasion, the client may move to have it taxed; but the more usual way is to summons the attorney before a judge; and if the judge's order be disobeyed, to move the court that the order may be made a rule

rule of court, and then proceed to an attachment in case of further contempt.

Any person in his own name, or in the name of any other, suing out any writ, or commencing or defending any action, in any of the courts of law or equity, mentioned in the said act as attorney or solicitor, in expectation of any gain, fee or reward, without being admitted, shall forfeit 50*l.* to the use of the person who shall prosecute, and be made incapable to maintain any action for any fee, reward or disbursement, on account of prosecuting or defending any such action. *Stat. 2 Geo. 2.*

No attorney who shall be a prisoner in any gaol or prison, or within the limits, rules or liberties of any gaol or prison, shall, during his confinement, in his own name, or the name of any other, sue out any writ or process, or commence or prosecute any action or suit, and all proceedings in such action or suit shall be void and of no effect; and such attorney so commencing or prosecuting any action or suit as aforesaid, shall be struck off the roll, and be incapacitated from acting as an attorney for the future; and any attorney permitting and empowering any such attorney as aforesaid, to commence or prosecute any action or suit in his name, shall be struck off the roll, and be incapacitated from acting as an attorney for the future. *Stat. 12 Geo. 2. c. 13. §. 9. 10.*

*Any person practicing as an attorney not being admitted forfeits 50*l.**

*No attorney being a prisoner to commence or prosecute any action.*

*Such attorney to be struck off the roll.*

*As also any other attorney permitting such attorney to use his name.*

This

*Not to extend to suits commenced before the confinement of such attorney.*

This not to extend to prevent any attorney so confined as aforesaid, from carrying on or transacting any suit or suits commenced before the confinement of such attorney. *Same Stat.*

*Attorney not attending, &c. to have no privilege.*

An attorney that has not been attending his employment in this court by the space of one year, unless hindered by sickness, shall not be allowed his privilege of an attorney. *Mich. 1654.*

*Not to be lessee in ejectment nor bail.*

No attorney to be lessee in an ejectment, nor bail for a defendant in this court. *Mich. 164. M. 6 Geo. 2.*

*No changing attorney without rule or order.*

No person without rule of court, or order of a judge or prothonotary, and notice to the adverse party or his attorney, shall change or shift his attorney; and such attorney newly coming in to take notice at his peril of the rules whereunto the former attorney was liable, had he continued. *Mich. 1654.*

*And his bill paid.*

The court will not permit an attorney to be changed in a cause, and another attorney appointed in his stead, till his bill of fees and disbursements be settled and paid.

*Attornies not to shift from one prothonotary's office to another.*

No attorney, without leave of the court, shall shift from the prothonotary's office where first sworn and settled; and no prothonotary shall suffer such attorney to enter any of his causes in his office contrary to this rule. *Trin. 21 Car. 2.*

The clerk of the warrants to certify to the seal office the names of such attornies that have discontinued, and are fore-

forejudged the court, and put out of the roll, and have not filed any warrants of attorney, nor continued their names upon the roll for above four terms past; and thereupon no such person shall have a writ of privilege or attachment sealed until they have the said writ signed by the clerk of the warrants, to testify that their names are on the roll, for which no fee is to be paid. *Trin. 29 Car. 2.*

*Attornies that have discontinued, forejudged, or put out of the roll, not to have writ of privilege or attachment.*

And now the sealer does not put the seal to any writ of privilege or attachment before it is signed by the clerk of the warrants.

*Writ of privilege to be signed by the clerk of the warrants.*

All attornies of this court should be admitted of some inn of court, or *Chancery*, and take chambers there, (if they conveniently may be had) else lodgings in some convenient place near the said inns, and leave notice in writing with the butler or porter of such inn where their lodgings are, except such attornies, who are inhabitants or house-keepers in *London, Westminster, Southwark*, or the suburbs thereof, and liberty of the *Tower of London*, and *St. Katherine's*; or are attornies of any courts within the said cities, town and liberty. *Mich. 1654. Trin. 29 Car. 2. Mich. 4 Annæ.*

*Attornies to be admitted of some of the inns of court.*

*Except.*

Every attorney of the court pays to the clerk of the warrants 8*d.* a term, viz. 4*d.* a term for the puisne judges (to be distributed in charity) and 4*d.* a term for the cryers of the court. And when any attorney brings a writ of privilege or attachment

*Each attorney pays 8 d. a term to the clerk of the warrants.*

tachment to be signed, or warrant of attorney to be filed, he must pay the arrears (if any) of his termage.

*Attorney answerable for his agent.*

*Matters not to be transacted in the country.*

A country attorney is answerable to his client for his agent.

Where country attorneys are concerned, declarations, pleas, and other proceedings, should not be delivered and carried on in the country, but by the agents in town.

*Declaration.*

If a rule be given to declare, and the plaintiff's attorney in the country agrees that a demand of the declaration may be made on him in the country, which is accordingly done, and a *Non-Pros* signed for want of a declaration, the *Non-Pros* is irregular, and may be set aside; for by the practice of the court, the declaration should have been demanded of the agent in town.

*Plea.*

If the agent of the plaintiff's attorney gives the agent for the defendant time to plead, the country attorney cannot sign judgment till that time be expired.

*Plea.*

A plea delivered in the country is irregular, and judgment may be signed.

*Issue.*

If the country attorneys agree that the issue shall be delivered in the country, and it is notwithstanding tendered in town, and not paid for by the agent, judgment may be signed, for the agreement is void.

*Issue.*

But where the defendant pleads by his attorney in the country, and the plaintiff's attorney accepts it there, he may tender the issue in the country, and if not paid for there, may sign judgment.

Notice of trial must be given in town, *Notice of trial.*  
but a countermand may be given in the *Countermand.*  
country.

*Sheriffs.*

AS they are bound to execute the pro-  
cess of the court, and punishable by  
the court for misbehaviour in executing  
the same, they are generally esteemed and  
looked upon as officers of the court.

Every sheriff shall make yearly a depu- *Every sheriff*  
ty on record, in the Chancery, King's *to make a de-*  
*Bench, Common Pleas, and Exchequer,* be- *puty on record*  
fore they shall return any writs, to receive *in court.*  
all manner of writs and warrants delivered  
to them. *Stat. 23 H. 6. c. 10.*

Every sheriff is to make and enter on  
record a deputy to receive all manner of  
writs and process. *Mich. 1654. Hil. 14,*  
*15, and Hil. 15 & 16 Car. 2. Trin. 1 Jac. 2.*

Each deputy yearly to have his name *Deputy to have*  
and place of residence in London or West- *his name and*  
minster, set up in the office of the clerk of *place of abode*  
the warrants. *Mich. 1654.* *in London or*  
*Westminster*

*set up in the office of clerk of the warrants.*

Sheriffs deputies are to give their atten- *To give his at-*  
dance in Westminster-Hall daily in term- *tendance in*  
time, that they may with more conveni- *Westminster*  
ency dispatch the duty belonging to their *Hall in Term-*  
respective offices. *Mich. 1654. Hil. 14 &*  
*15 and Hil. 15 & 16 Car. 2. Trin. 1*  
*Jac. 2.* *times.*

Sheriffs

*Sheriff's not to deliver out warrants before writs delivered to them, or blank warrants.* Stat. 43 Eliz. c. 6. 6 Geo. 1. c. 21.  
 Sheriffs are not to deliver out any warrants before the writs be sued forth and delivered to them. Nor deliver out any blank warrants. *Mich. 1654. Hil. 14 & 15 Car. 2. Trin. 1 Jac. 2.*

*No under-sheriff to practice as an attorney.* 1 H. 5. 4. *Mich. 1654.*  
 No under-sheriff to practice as an attorney during such his imployment. *Stat.*

*Sheriff's fees on executions.*  
 The sheriff, for serving any execution upon the body, lands, goods or chattels, shall have 12d. in the pound where the sum exceeds not 100l. and if it does exceed, then 6d. for every pound exceeding 100l. that he shall levy or take the body in execution for. *Stat. 29 Eliz. c. 4.*

*On writ of Possession.*  
 On executing a writ of *Habere facias possessionem*, the sheriff shall not take above 1s. in the pound, where the rent exceeds not 100l. *per Annum*; and 6d. in the pound for every pound over and above. *Stat. 3 Geo. 1. c. 15. §. 16.*

*On Capias ad Satisfaciendum.*  
 On executing a *Capias ad satisfaciendum*, the sheriff to take poundage only for the real debt, on penalty of treble damages, and 200l. The real debt to be mark'd on the back of the writ. *Same Stat. §. 17.*

*Sheriff's to indorse attorney's name on warrants.*  
 Every sheriff, or other officer who shall make out any warrant upon any writ, process or execution, and shall not subscribe or indorse the name of the attorney who sued out the same, shall forfeit the sum of five pounds, to be assessed as a fine upon such sheriff or other officer, by the court,

court, one moiety to the king, the other moiety to the party aggrieved by such omission. *Stat. 12 Geo. 2.*

If any sheriff, under-sheriff, or their deputy, bailiff, coroner, bailiff of any liberty, or other officer having the return of process, shall not return the same within six days after service of a rule of this court for that purpose, he shall be liable to pay the costs occasioned by such neglect. *Hill. 8 Geo. 1.*

Service of the rule on the under-sheriff, or on one who really acts as under-sheriff, though he be not under-sheriff, is sufficient to ground attachment against the sheriff.

When a new sheriff is chosen, yet the old sheriff continues sheriff of the county till the new sheriff is sworn, and he receives a writ of *Supersedeas*.

On the decease of any sheriff the under-sheriff is to act in his name till another be appointed. *Stat. 3 Geo. 1. c. 15. §. 8.*

The sheriff of every shire, being no city or town made a shire, within which there is any franchise or liberty, the lord whereof is intitled to the return of writs, shall (if required by such lord) within one month after such request, nominate and appoint one or more deputy or deputies, at the costs of such lord, to be resident at some town or place in or near such franchise or liberty, to be appointed by the lord chancellor and chief justice of *B. R.* and *C. B.* or one of them hereby authorised to appoint such town or place, and to settle

*Sheriff not returning process within 6 days after service of rule, to pay costs.*

*Service on the under-sheriff sufficient.*

*Old sheriff to continue till new one sworn.*

*On the death of a sheriff the under-sheriff to act till a new one appointed.*

*Sheriff on request and cost of a lord of a franchise or liberty, to appoint a deputy to reside at some place in or near the franchise.*

*Place and costs to be appointed and settled by lord chancellor, &c.*

*Deputy to receive writs, and in name and under seal of sheriff to issue warrants to the lord of the franchise.*

*Taking no more than the accustomed fees. Punishment of sheriff or deputy making wilful neglect.*

what Costs shall be paid therefore by such lord; and such deputy or deputies shall reside at such town or place so to be appointed, and have authority in the sheriff's name to receive and open all such writs and process (the execution or return whereof doth belong to the lord of such franchise or liberty) and in the name and under the seal of the sheriff, to issue out such warrant or warrants to such lord as by law is requisite for the due execution of such writ or process; and such deputy or deputies is and are required, on tender of such writ or process, to receive and open the same, and issue such warrants thereon without delay, in such manner and form as the sheriff may or ought to do, without taking any further fee than now due and accustomed for such warrant, on pain that every such sheriff or deputy guilty of any wilful neglect or default shall be punished as for a contempt of court, and make satisfaction to the party damaged. *Stat. 13 Geo. 2. c. 18.*

### *Of the Four Terms.*

*The four terms.*

*Fix'd and moveable terms.*

**T**HERE are four terms in the year, during which this court sits, *viz.* Michaelmas term, Hilary term, Easter term and Trinity term; the two first are called fix'd terms, as constantly falling on certain fix'd days in the year; the two latter terms are called moveable terms, Easter term being governed by Easter Day, and Trinity term

term being governed by *Corpus Christi* day, both which are moveable feasts. *Hilary* *Issuable terms.* and *Trinity* terms are called issuable terms, for that in them issues are made up for trials at the assizes which respectively follow those terms.

*Michaelmas* term begins on the twenty- *Michaelmas* third day of *October*, if not *Sunday*, if *term.*

*Sunday*, on the twenty-fourth (its essoin-day being the twentieth of *October*, the day three weeks after *Michaelmas* day) and ends on the twenty-eighth day of *November*, if it be not a *Sunday*, but if a *Sunday*, then on the morrow following. This term, before the statute 16 *Car. I. c. 6.* began on the ninth day of *October*, and had eight returns, which by that statute are reduced to fix.

*Hilary* term begins on the twenty-third *Hilary term.* day of *January* (except it be on a *Sunday*, and then on the morrow after) being always that day eight weeks on which *Michaelmas* term ended, its essoin-day being the twentieth of *January*, and it ends on the twelfth day of *February* (if not *Sunday*, and then on the morrow after) being always the same day of the week on which *Michaelmas* term began.

*Easter* term begins on the *Wednesday* *Easter term.* fortnight after *Easter-Day*, its essoin-day being the *Sunday* next preceding, but held on the *Monday*, and ends on the *Monday* next after *Ascension day*.

*Trinity* term begins on the *Friday* next *Trinity term.* after *Trinity Sunday*; and though that day

should happen to be the feast of St. *John* the *Baptist*, the term must then begin, for by the *Stat. 32 H. 8. c. 21.* the full term shall begin on the *Friday* next after *Corpus Christi* day; the *essoin-day* is the *Monday* preceding. It ends on the *Wednesday* fortnight after it began, except it happen on the twenty-fourth of *June*, being the feast of St. *John* the *Baptist*, and then it must be adjourned on the *Tuesday* to the *Thursday* following. This term was limited and settled as it now is, by the said *Stat. 32 H. 8.* it having before more returns, and a different commencement.

*Essoin-day.*

The *essoin-day* (from *essoine*, or *exonnie*, an *excuse*, where the defendant cannot conveniently appear) is said to be the first day of the term, and on that day one of the judges goes down to *Westminster* for the keeping *essoins*, profers, returns, &c. But full term begins always the fourth day after inclusive, except in *Trinity* term, when it begins on the fifth, by reason of *Corpus Christi* day, which is *dies non juridicus*.

The *essoin-day* is the first day of term, but in common parlance the first day the court sits is the first day of the term; so where promise was made, the day after the *essoin-day* of *Trinity* term, to deliver an indenture before the end of the *Trinity* term next, adjudged he must do it the same term, not that time twelve months. *Bishop* and *Hanecourt*, 3 *Cro.* 310. 1 *Cro.* 102.

Writ

On a writ of adjournment nothing can be done at the day but to read the writ and adjourn all appearances and proceedings till the day appointed, and no appearance can be made or other matters done then, and because an imparlance was entered as on that day, it was held error. 2 Cro. 445. *Writ of adjournment.*

A Judgment relates to the effoin-day, which is the first day in law, and not to the *Quarto die post*, which is but a day of grace; *ideo* a judgment of Hilary term had precedence to a statute acknowledged, 22 Jan. Stamford and Cooper, 1 Cro. 102. Cro. Car. 73. Vide Dyer 200 and 361. 34 H. 6. fo. 20. 22 H. 7. fo. 7. *Judgment.*

E 3

Mich.



*Hilary Term, which contains three Weeks complete, hath four*

*Returns.*

*By ORIGINAL.*

1. On the octave of Saint Hilary.

2. From the day of Saint Hilary in fifteen days.

3. On the morrow of the Purification of the Blessed Mary.

4. On the octave of the Purification of the Blessed Mary.

*By ATTACHMENT, BILL, &c.*

On ( ) next after the octave of Saint Hilary.

On ( ) next after fifteen days of Saint Hilary.

On ( ) next after the morrow of the Purification of the Blessed Virgin Mary.

On ( ) next after the octave of the Purification of the Blessed Virgin Mary.

*REMARKS.*

*These Terms which contain three Weeks and six Days, begin Easter*

*Easter Term*, which contains three Weeks and six Days, hath five Returns.

By ORIGINAL.		By ATTACHMENT, BILL, &c.	
1. From the day of <i>Easter</i> in fifteen days.	On (	) next after fifteen days of <i>Easter</i> .	
2. From the day of <i>Easter</i> in three weeks.	On (	) next after three weeks of <i>Easter</i> .	
3. From the day of <i>Easter</i> in one month.	On (	) next after one month of <i>Easter</i> .	
4. From the day of <i>Easter</i> in five weeks.	On (	) next after five weeks of <i>Easter</i> .	
5. On the morrow of the Ascension of our Lord.	On (	) next after the morrow of the Ascension of our Lord.	

Trinity Term, which contains twenty Days, hath four Returns.

By ORIGINAL.

By ATTACHMENT, BILL, &c.

1. On the morrow of the Holy Trinity.  
On ( ) next after the morrow of the Holy Trinity.
2. On the octave of the Holy Trinity.  
On ( ) next after the octave of the Holy Trinity.
3. From the day of the Holy Trinity in fifteen days.  
On ( ) next after fifteen days of the Holy Trinity.
3. From the day of the Holy Trinity in three weeks.  
On ( ) next after three weeks of the Holy Trinity.

All

*Essoin-days in Easter and Trinity terms are Sundays, Except.*

All the essoin-days in *Easter* term except the last, which is *Crastinum Ascensionis Domini*; and all the essoin-days in *Trinity* term except the first, which is *Crastinum Sanctæ Trinitatis*, fall on Sundays.

*Writs grounded on originals returnable on general returns.*

*Attachments, &c. on days certain.*

All writs issuing out of this court, grounded upon original writs out of *Chancery*, must be made returnable on general return days, as on the morrow of the *Holy Trinity*; but writs of attachment, and writs subsequent thereto, and writs grounded on bills filed against attornies, and such officers of the court as are intitled to the privilege of the court, or members of the house of commons, writs of *Habeas Corpus*, &c. must be made returnable on a day certain, as on *Friday* next after the morrow of the *Holy Trinity*. But care must be taken that they be not made returnable on any of the following days, which are *Dies non Juridici*, viz. *All Saints* and *All Souls* in *Michaelmas* term, the feast of the *Purification* in *Hilary* term, *Ascension-day* in *Easter*, and the feast of *St. John the Baptist*, if it happen in *Trinity* term (unless it be the first day of that term).

*Dies non juridici.*

*Fifteen days between Teste and return of original writs and writs subsequent.*

There must be at least fifteen days between the *Teste* and return of all original writs returnable in this court, and between the *Teste* and return of all ordinary writs sued and procured upon the same, except where altered by the following acts of parliament.

10 An attachment of privilege at the suit of an attorney must also have fifteen days between the *Teste* and return. *And attachments of privilege.*

All writs and process in personal actions having day from *Tres Michaelis* until *Crastino Animarum*, shall be good and effectual in the law, notwithstanding there be not fifteen days between the *Quarto Die* of *Tres septimanas sancti Michaelis* and the *essoinday* of *Crastino Animarum*. Stat. 16 Car. 1. c. 6. sect. 8. *Writs having day from Tres Mich. to Crast. Animarum, good.*

In all actions of debt, and other personal actions, actions of *Ejectione Firmæ* for lands or tenements, after issue joined to be tried by a jury, and after any judgment had or obtained, there shall not need to be fifteen days between the *Teste* and return of any writ of *Venire facias*, *Habeas Corpora Juratorum*, or *Distingas Juratores*, writ of *Fieri facias*, or writ of *Capias ad satisfaciendum*, and the want thereof shall not be assigned for error; but not to extend to any writ of *Capias ad satisfaciendum*, whereon an exigent after judgment is to be awarded, or to a *Capias ad satisfaciendum* against the defendant to make the bail liable. 2 Stat. 13 Car. 2. c. 2. sect. 6, 7. *Where writs of Ven. fac. Hab Cor. Jur. Distring. Jur. Fi. fac. and Ca. fa. need not have 15 days between Teste and return. Except a Ca. Sa. to ground an exigent, or make bail liable.*

## Of Commencing an Action.

ALL actions in this court are either founded on originals out of *Chancery*; *Actions by original.*

On attachments of privilege at the suit of attornies, or other officers intituled to the privilege of the court; *Attachment of privilege.*

On

**Bill.** On bills filed against such attornies or officers, or against members of parliament;

**Habeas Corpus, &c.** On writs of *Habeas Corpus cum Causa*, *Certiorari*, &c. removing causes out of inferior courts of record;

**Re. fa. lo. &c.** On writs of *Recordari facias loquelam*, *Accedas ad Curiam*, or writs of false judgment, removing causes out of inferior courts not of record.

**Of Bail.** In commencing actions in this court, It is to be considered, What causes of action require bail, and what persons are liable to be held to bail.

**No bail of an heir, nor of an executor or administrator, unless on a Devastavit grounded, as I apprehend, on a return by the sheriff to a Fieri facias de bonis Testatoris, or a Scire fieri inquiry, and not on the bare suggestion of the plaintiff.**

**Nor on a penal statute.** In debt on a penal statute the defendant is not to be held to special bail.

**Nor on a bail-bond or recognizance of bail.** Neither is bail required in debt on a bail-bond, or recognizance of bail, for that would tend to bail *ad infinitum*.

**In battery, conspiracy, or false imprisonment, no bail of course.** In battery, conspiracy, or false imprisonment, no bail of course without special motion and order. *Mich. 1654.*

**No bail for a malicious prosecution where the plaintiff was acquitted upon a defect in the indictment.** In an action for a malicious prosecution a judge will not grant an order to hold the defendant to bail, if the plaintiff was acquitted upon a defect in the indictment, and not upon the merits. *2 Keb. 796.*

In

In an action for a criminal conversation *Bail by order*  
with the plaintiff's wife, on an affidavit of *for criminal*  
the fact, a judge will grant an order to *conversation.*  
hold the defendant to bail for such sum as  
he shall think reasonable on the circum-  
stances of the case and parties.

On affidavit and application in the trea- *Bail in an*  
sury, the judges have ordered the defen- *action for mesne*  
dant to be held to bail in an action for *profits.*  
mesne profits. *Pulleyne & Ux. v. Richard-*  
*son, Pas. 1 G. 2. Duncombe v. Motteram &*  
*al. Trin. 2 & 3 G. 2.*

On an affidavit made, the defendant was *Bail in trespass*  
held to bail in an action of trespass, for *for entering*  
entering the plaintiff's hop-ground, and *plaintiff's hop-*  
taking and carrying away 20,000 hop- *ground, and*  
poles, to the plaintiff's damage of 40 *taking away*  
l. *his hop-poles.*  
The court refused to discharge the defen-  
dant on a common appearance, and decla-  
red, tho' it was reasonable to have a judge's  
order in battery, there was none in this  
case. *Cook & al. v. Sankey, Trin. 7 & 8*  
*Geo. 2.*

In slander no bail, except in slander of *No bail in slan-*  
title, and then to be left to the discretion *der, except*  
of the judge, *Mich. 1654. slander of title.*

Bail is not generally required in cove- *Nor in cove-*  
nant, unless it be for payment of money. *nant, unless for*  
*Same Rule. payment of*  
*money.*

But tho' the covenant be not for pay- *Or damages*  
ment of money, if the plaintiff makes an *ascertained by*  
affidavit of the sum he is damnified in by *affidavit.*  
the breach of the covenant, the court will  
not discharge the defendant on a common  
appearance.

Where

*Bail in debt on a judgment, if no bail in the original action; aliter if bail in the original action.*

Where an action of debt is brought on a judgment, if there was bail put in to the original action the defendant shall not be held to bail in the action of debt on the judgment; but if there was no bail in the original action, then bail must be put in to the action of debt on the judgment.

*The like the error brought on the judgment, and bail be put in on the writ of error.*

If a writ of error be brought on a judgment, and bail be put in on the writ of error, and pending the writ of error, an action of debt be brought on the judgment, the defendant in such action shall be held to bail if there was no bail in the original action; for though it may be said the bail on the writ of error is a security for the plaintiff's demand, yet it is to be observed that there may be accidents whereby such bail will not be liable; as that the writ may abate by the death of the chief justice, or the like.

*Prisoner discharged not to be held to bail in debt on the judgment.*

A prisoner discharged by *Supersedeas* for want of prosecution shall not be held to bail in an action of debt brought on the judgment obtained in the cause wherein he was discharged. *Hil. 8 G. 2. See the rule at large tit. Prisoners.*

*Action against baron and feme, and wife only arrested, she shall be discharged on a common appearance. Aliter if both arrested.*

If an action be brought against *Baron* and *Feme*, and the wife only be arrested, she shall be discharged on a common appearance; for otherwise the husband may contrive the imprisonment of the wife; but if both the husband and wife be arrested, she shall not be discharged until bail be put in for both, for otherwise a woman may

may marry a man in gaol and defraud her creditors.

No attorney of this court, or other officer intitled to the privilege of the court, is to be held to bail, unless it be on an attachment for a contempt (to which, bail must be taken by the court or a judge, and not by the sheriff) or in an action at the suit of an attorney, or any other person intitled to the privilege of this court; for in such case the plaintiff's privilege takes away the defendant's.

*Attorney not to be held to bail unless for a contempt, &c.*

No person shall be held to bail upon any process issuing out of this court where the cause of action does not amount to the sum of ten pounds or upwards; and in all cases where the cause of action shall not amount to ten pounds or upwards, the plaintiff shall not arrest the body of the defendant, but shall serve him personally with a copy of the process. *Stat. 12 G. 1. c. 29. §. 1, 2. Stat. 5 G. 2. c. 27. Stat. 13 G. 2. c. 18.*

*No bail where the cause of action amounts not to 10l. or upwards.*

*But defendant to be served with copy of process.*

No sheriff or other officer within the principality of *Wales*, or counties Palatine, upon any writ or process issuing out of any of the courts of record at *Westminster*, shall hold any person to special bail, unless an affidavit be first made in writing, and filed in that court out of which such writ or process is to issue, signifying the cause of action, and that the same is twenty pounds and upwards; and where the cause of action is twenty pounds and upwards, bail shall not be taken for more than the sum

*No special bail in Wales or the counties Palatine, unless affidavit be made of the cause of action, and that the same amounts to 20l. and upwards.*

sum expressed in such affidavit. Stat. 11  
 & 12 W. 3. c. 9. s. 2.

*Proceedings by original in actions not requiring bail.*

*Where no bail required, a common clausum fregit to be sued out. May declare thereon in any county, or for any cause of action.*

If the cause of action does not require bail, a *Præcipe* is to be made out for a common *Capias* in trespass, on which the plaintiff may declare in any county, or for any cause of action, as the case shall require. The filacer makes out the *Capias*, and procures the original from the curfitor, and returns and files it.

*The Præcipe.*

*Præcipe in trespass.*

*Middlesex*, *Capias* for *W. P.* against *J. B.* late of the parish of *St. Clement Danes* in the county of *Middlesex*, taylor, broke the *Close* at *Westminster*.

*L. R.* Returnable on the octave  
 22 Dec. 1740. of *St. Hilary*.

The *Præcipe* is to be carried to the proper filacer, who will make out the *Capias*.

*The Form of the Capias.*

*Capias thereon.*

*GEORGE* the Second, &c. To the sheriff of *Middlesex*, greeting. We command you, that you take *J. B.* late of the parish of *St. Clement Danes* in your county, *Taylor*, if he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on the octave of *St. Hilary*, to answer *W. P.*

# in the Court of Common Pleas.

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in a plea, wherefore with force and arms he broke the *Clofe* of the said *W.* at *Westminster*, and did other injuries to him, to his great damage, and against our peace; and have there this writ. Witness Sir *John Willes*, Knight, at *Westminster*, the twenty-eighth day of *November* in the fourteenth year of our reign.

*Eyre.*

You may put four defendants in a writ; but there must be but one plaintiff, unless it be a joint action; for this writ you pay as follows:

## To the Filacer.

	s.	d.
For the original	0	1 0
Filing ———	0	0 4
For the <i>Capias</i>	0	0 10
Duty ———	0	1 6
		0 3 8
At the seal office ———		0 0 7
		0 4 3

Then a copy of the process must be made with an *English* notice, subscribed as mentioned in the two next paragraphs, which copy must be served on the defendant.

But by *Stat. 5 Geo. 2. c. 27. §. 4.* and *13 Geo. 2.* upon every copy of such process shall be written a notice of the intent and meaning of such service, to the effect following, viz.

Vol. I.

F

C. D.

*The form of the notice.*

C. D. You are served with this process, to the intent that you may, by your attorney appear in his majesty's court of *Common Pleas* at the return thereof, being the twentieth day of *Jan. 1740.* [as the case shall happen to be] in order to your defence in this action.

*The day of the return to be inserted though a Sunday.*

The very day of the return of the process must be inserted, although it should happen to be a *Sunday.*

*5 s. for making and serving the copy.*

No more than 5 s. is to be taken for the making and serving a copy of such process, and no fee for the notice. *Stat. 5 Geo. 2.*

*In franchises the process to be served by the proper officer.*

In particular franchises and jurisdictions the proper officer there shall execute such process. *Stat. 5 Geo. 2.*

But if the process be not served by the proper officer, the court will not stay proceedings; the lord of the liberty may bring his action, if he thinks proper.

*Capias and not original to be served.*

The process, of which a copy is directed by the above statutes to be served on the defendant, must be a *Capias*, and not an original writ.

*Of serving process in a county palatine.*

If the process be directed into a county palatine, the defendant is to be served with a copy of such process, and not with a copy of the mandate thereupon from the bishop or chancellor to the sheriff of the county.

*Where a copy served, it must be with notice, tho' action for above 10 l. or writ special.*

When the defendant is served with a copy of a writ, there must be an *English* notice subscribed as above directed, tho' the cause of action should be above ten pounds,

pounds, or the writ should be a special *Capias*.

If the process be against *Baron and Feme*, service on the husband is sufficient for both; and if the husband does not appear for himself and his wife, the plaintiff may enter an appearance for both.

*Process against baron and feme; service on the husband sufficient.*

But in a joint action against two or more defendants, each defendant must be served with a copy of the process.

*In a joint action each defendant must be served.*

Process served on the day of the return at six in the evening, after the rising of the court, has been held good, for there is no fraction of a day.

*Service on the day of the return after the rising of the court, good.*

If there be any irregularity in the service of the process, or in the notice subscribed to the process, the defendant must apply to the court before interlocutory judgment is signed.

*Irregularity in process to be complained of before interlocutory judgment.*

If the defendant complains of any irregularity in the process, or notice subscribed, he must annex the copy to his affidavit.

*And process to be annexed to affidavit.*

*Proceedings by original in actions requiring bail.*

If the cause of action amounts to ten pounds or upwards, affidavit must be made and filed of the cause of action.

*If bail required, affidavit to be made of cause of action.*

*Stat. 12 Geo. 1. c. 29. 5 Geo. 2. c. 27. 13 Geo. 2.*

*The Attorney's Practice*

*The form of an affidavit of a debt in order to hold the defendant to bail.*

*Common Pleds.*

*The form of the affidavit.*

H. H. of, &c. maketh oath, that G. W. late of, &c. is justly and truly indebted to this deponent in the sum of 200*l.* on one bond or obligation under the hand and seal of the said G. W. bearing date, &c. whereby the said G. W. is bound to this deponent in the penal Sum of 400*l.* conditioned for the payment of 200*l.* and interest to this deponent, on the day of                      last past.

*Sworn, &c.*

*Before whom the affidavit to be made.*

This affidavit may be made before any judge of this court, or commissioner authorised to take affidavits in this court, or before the officer, who issues the writ or his deputy; and for which affidavit 1*s.* above the stamp-duties shall be paid, and no more. 12 Geo. 1. 5 Geo. 2.

By the general rule and practice of this court, affidavits taken before attornies (as commissioners) in causes, wherein they were concerned for the parties in whose behalf such affidavits were made, have been deemed insufficient.

*Affidavit to hold to bail, or of service of process, may be made before plaintiff's attorney, if a commissioner.*

But an affidavit made in order to hold the defendant to bail before process sued out, or an affidavit of service of process where only a common appearance is required, may be sworn before the plaintiff's attorney, being a commissioner, and may be

be made use of for the purpose aforesaid.

*Plaf. 13 Geo. 2.*

Notwithstanding the plaintiff makes an affidavit of his debt, or other cause of action, yet the matter of bail is examinable by the court. *Matter of bail examinable by the court.*

The next thing is to make out a *Præcipe* for the filacer, which you must suit to the nature of your action, according to the following precedents.

*Middlesex.* Command G. W. late of *Westminster* in your county, Esq; \* otherwise called G. W. of *Westminster* in the county of *Middlesex*, Esq; that he render to H. H. 400*l.* which he owes him, and unjustly detains. *A Præcipe in debt.*

*Ret. in 3 weeks of St. Mich.*

J. B. [the attorney]

19 Aug. 1740.

Affidavit for 200*l.*

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the sheriff of *Middlesex*, greeting. We command you, that you take G. W. late of *Westminster* in your county, Esq; \* otherwise called, (&c.) if he shall be found *The Capias thereon.*

F 3

found

---

\* The *Alias di&* is used where the debt arises by specialty, but it is said not to be necessary to be inserted, and that it may be and is better left out, and was so adjudged *Alias di& not necessary.*

found in your bailwic, and keep him safely, so that you may have his body before our justices at *Westminster*, from the day of *St. Michael* in three weeks, to answer *H. H.* of a plea, that he render to the said *H. H.* four hundred pounds which he owes him, and unjustly detains, as it is said; and have there this writ. Witness *Sir John Willes*, Knight, at *Westminster*, the 25th day of *June* in the fourteenth year of our reign.

Præcipe in  
debt against  
two defen-  
dants.

Officina  
Brevium 22.

*Byre.*  
*Middlesex.* Command *W. C.* late of the parish of *St. Clement Danes* in your county, tallow-chandler, that he render to *W. D.* 30 l. which he owes him, and unjustly detains. Command *C. M.* late of, &c. that he render to the said *W. D.* 56 l. which he owes him, and unjustly detains.

Ret. &c.

J. B.

10 Jan. 1740.

Affidavit against { *W. C.* for 30 l.  
                                  *C. M.* for 56 l.

On a Latin

*bond the Alias* If the action be in debt on a bond, and the obligation is in *Latin*, the *Alias diu* (if inserted) must be dict, if used, also in *Latin*, as thus, Command *John Doe* late of *London*, Gentleman, otherwise called *Johannem Doe de London* Generosum.

On

*in the Court of Common Pleas.*

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On all *Præcipes quod reddat*, if the sum exceeds forty pounds, a fine is payable to the king in the following proportions, *Fines payable to the king.*

From 40 pounds to 100 marks 6 8

From 100 marks to 100 pounds 10 0

From 100 pounds to 200 marks 19 4

From 133. 6. 8. to 166. 13. 4. 16 0

From 166. 13. 4. to 200 pounds 10 0

And so consequently for every 100 marks more — — 6 8

And for every 100 pounds more 10 0

Wherefore if you would avoid the fine draw out a *Præcipe* for a *Capias* in trespass with an *Acetiam*, in debt in this manner.

*Middlesex. Capias* for *T. D.* against *A. S.* *Præcipe for a late of the parish of St. Martin in the Fields Capias in trespass in your county, surgeon, broke the Close past with an Acetiam in debt.* at *Westminster*; and also in a certain plea of debt upon demand for 80*l.*

*Ret' &c.*

R. R. by L. R. } Affidavit for 40*l.*  
26 May 1740. }

*GEORGE* the Second, &c. To the *Captian* Sheriff of *Middlesex*, greeting. We command you, that you take *A. S.* late of, &c. if he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster*, on to answer *T. D.* of a plea, wherefore with force and arms he broke the close of the said *T.* at *Westminster*,  
F 4

ster, and did other wrongs to him, to the great damage of the said *T.* and against our peace; and also, that the said *A.* answer to the said *T.* according to the custom of our court of the bench, in a certain plea of debt upon demand for forty pounds; and have there this writ. Witness, &c.

Præcipe in  
trespass, with  
an Aceciam in  
case upon pro-  
mise.

*Middlesex. Capias* for *L. R.* against *L. K.* late of the parish of *St. James* in the liberty of *Westminster* in your county, widow, broke the close at *Westminster*; and also in case upon promise for 50*l.*

Ret'

*Capias thereon.*

*GEORGE* the Second, &c. To the sheriff of *Middlesex*, greeting. We command you, that you take, &c. (as before); and also, that the said *L. K.* may answer the said *L. R.* according to the custom of our court of the bench, in a certain plea of trespass on the case upon promise, to the damage of the said *L. R.* fifty pounds; and have there this writ. Witness, &c.

Præcipe in  
case against  
two defen-  
dants.

*London. Capias*, for *T. W.* against *J. M.* late of *London*, Gent. and *S. C.* late of *London*, Esq; trespass; and also against the said *J.* for 90*l.* upon promise; and also against the said *S.* for 30*l.* upon promise.

Ret'

Præcipe in  
assault.

*Lincoln. Capias* for *J. P.* against *H. B.* late of *Stamford* in your county, grocer, in a plea of trespass and assault.

Ret'

Upon

Upon a dangerous assault and battery <sup>On a dangerous battery</sup> that may require bail, an affidavit must be made of the fact at large, whereupon <sup>bail may be</sup> a judge will make an order for holding the defendant to bail in such sum as on the <sup>affidavit and a</sup> circumstances of the case he shall think reasonable; and then you sue out a *Præcipe* for a common *Capias* with an *Acetiam*. <sup>the judge's order.</sup>

*London. Capias* for *W. H.* against *J. B.* *Præcipe in as-*  
late of *London, Cabinet-Maker*, broke the *sault with an*  
*Cloze* at *London*; and also in trespass and *Acetiam*.  
assault, to the damage of the said *W.* 200*l.*

*Ret'*  
Bail by order, on *J. W.*  
Affidavit for 100*l.*

*Middlesex. Capias* for *E. L.* against *G. C.* *Præcipe in co-*  
late of *Westminster* in your county, Gentle-  
man, otherwise called (as in the indenture)  
in a plea, that he perform to the said *E.*  
the covenant made between them, accord-  
ing to the force, form, and effect of a cer-  
tain indenture made between them. *venant.*

*Southampton. Capias* for *T. D.* against *J. W.* *Præcipe in ac-*  
late of, &c. that he render to the *count as recei-*  
said *T.* his reasonable account for the time *ver.*  
in which he was receiver of the money of  
the said *T.* &c.

If as a bailiff, then as before to — *As bailiff.*  
for the time in which he was bailiff of the  
said *T.* in *L.* &c.

If

*Bailiff and receiver.*

If as bailiff and receiver, then for the time he was his bailiff in L. and receiver of the money of the said T. &c.

*Præcipe in annuity.*

*Lincoln.* Command J. P. late of C. in the county aforesaid, Gentleman, that he render to O. R. 60*l.* which are in arrear to him for a certain annuity of 30*l.* which he owes him, and unjustly detains, &c.

*Where a Testatum Capias necessary.*

If the defendant lives not in the county wherein you intend to try the action, and the cause of action requires bail, you make out a *Præcipe* for a *Testatum Capias*, which you carry to the filacer for that county in which you intend to try the cause; as, suppose the defendant lives in the city of *York*, and you would try the cause in *London*, you make out a *Præcipe* in the following form, which you carry to the filacer for *London*.

*Præcipe for a Testatum Capias.*

*London. Capias* for H. P. against R. J. late of the city of *York*, Bookseller, broke the close at *London*.

*Returnable on the octave of St. Hilary.*

*City of York, Testatum Capias*, and also for 200*l.* upon promise.

*Returnable on the octave of the Purification.*

J. D.

Affidavit for 100*l.*

31 July 1739.

GEORGE

GEORGE the Second, by the Grace <sup>Testatum Ca-</sup>  
of God, of Great Britain, France and Ire-<sup>pias.</sup>  
land King, Defender of the Faith, &c. To  
the sheriffs of the city of York, greeting.  
We command you, that you take R. J.  
late of the city of York, Bookfeller, if he  
shall be found in your bailiwick, and keep  
him safely so that you may have his body  
before our justices at *Westminster*, on  
to answer H. P. of a plea,  
wherefore with force and arms he broke  
the close of the said H. P. at *London*, and  
did other injuries to him, to the great da-  
mage of the said H. and against our peace:  
And also, that the said R. answer the said *Acetiam.*  
H. according to the custom of our court  
of the bench, in a certain plea of trespass  
upon the case on promise, to the damage  
of the said H. of two hundred pounds.  
And whereupon our sheriffs of *London* re-  
turned to our justices at *Westminster*, at  
a certain day now past, that the said R.  
was not found in their bailiwick, whereas  
it is testified in our said court, that the said  
R. doth lie hid, and run from place to  
place in your county; and have there this  
writ. Witness, &c.

If the defendant lives in any liberty  
which the sheriff cannot enter, you may  
get the filacer to make out a *Non Omittas*,  
whereupon the sheriff may enter.

*The*

*A Non Omittas Capias.*

*The Form of a Non Omittas.*

GEORGE the Second, by the Grace of God, King of *Great Britain, France and Ireland*, defender of the faith, &c. To the sheriff of *L—*, greeting. We command you, that you do not omit by reason of any liberty of the liberty of the rape of *D.* in your county, but that you take *S. C.* late of, &c. if he shall be found in your baillic, and that you keep him safely, so that you may have his body before our justices at *Westminster*, on \_\_\_\_\_ to answer *W. N.* of a plea, wherefore with force and arms he broke the close of the said *W.* at *G.* and did other injuries to him, to the great damage of the said *W.* and against our peace. And also that the said *S.* may answer the said *W.* according to the custom of our court of the bench, in a certain plea of debt upon demand for thirty pounds. And whereupon you returned to our justices at *Westminster* at a certain day now past, that the bailiff of the aforesaid liberty, whom you commanded, by virtue of our said writ to you thereupon directed, to take the said *S.* gave you no answer thereto; and have there, &c.

*Acetiam.*

By the like writ out of the court of *King's Bench* the sheriff may enter any liberty, for the writ is *Quod non Omittas propter aliquam libertatem in com. tuo quin capias, &c.* 5 Co. 92.

If

If the defendant cannot be taken on the first writ, or served with a copy of it, as the case shall be, and you don't propose to outlaw him, you sue out a *Capias* by continuance, the *Præcipe* for which is the same as before, only this difference, instead of saying, "*Capias* for T. D. you say, "*Capias* by continuance for T. D." But the writ is exactly the same as the first, without the distinction of *Alias* or *Pluries*. You pay for a *Capias* by continuance, to the

Filacer only	—————	o	10
Duty	—————	i	6
Seal	—————	o	7

2 11

As the filacer makes out all these writs, I think it needless to trouble the reader with any more precedents of them.

Every officer or clerk of this court, who shall sign any writ or process before judgment, to arrest any person thereupon, shall, before the signing thereof, set down upon such writ or process, the day and year of his signing the same, which shall be entered on the remembrance upon the forfeiture of 10*l*. Stat. 5, 6 W. & M. and 9, 10 W. 3. for laying duty on vellum, &c.

Where the plaintiff's cause of action shall amount to the sum of 10*l*. or upwards, and affidavit be thereof made, the sum specified in such affidavit shall be indorsed on the back of the writ or process, for which sum so indorsed, the sheriff or other

Where the defendant cannot be arrested on the first writ, a *Capias* by continuance is to be made out.

The day of signing the writ to be set down on the writ.

Sum sworn to, to be indorsed on the writ.

other officer to whom such writ or process shall be directed shall take bail, and for no more. 12 Geo. 1. 3 Geo. 2. 13 Geo. 2.

*The name of the attorney to be subscribed on every writ for arresting the body, execution and warrant thereon.*

Every writ for arresting the body, writ of execution, and every warrant that shall be made out on any such writ or execution, shall, before the service thereof, be subscribed or indorsed with the name of the attorney, in a common legible hand, by whom such writ, execution or warrant, shall be sued forth; and if such attorney shall not be the attorney immediately retained by the plaintiff, then also with the name of the attorney so immediately retained. Stat. 2 Geo. 2.

*And on every copy of any writ to be served on the defendant.*

Every copy of any writ or process, that shall be served on any defendant, shall before the service thereof be in like manner subscribed or indorsed with the name of the attorney, who shall be immediately retained by the plaintiff in such writ or process. Same Stat.

*But the act doth not make the process void for want thereof.*

In case the attorney's name be not put to the writ, the act of parliament doth not make the process void; and tho' the attorney may be punished for not putting his name to it, the party ought not to suffer. Sed Q. et vide postea.

*The not subscribing the attorney's name on a warrant doth not vitiate the writ.*

The not subscribing or indorsing the name of the attorney on any warrant that shall be made out upon any writ, process or execution, shall not vitiate the same; but such writ, process and execution, and all proceedings thereon, shall be as valid and effectual, notwithstanding such omission,

tion, as if the act of 2 Geo. 2. had not been made; *Provided* the writ whereon such warrant is made out be regularly subscribed or indorsed according to the said act. Stat. 12 Geo. 2.

## Of Common Appearances.

**C**OMMON appearances to writs made out by the filacers are entered with the filacers, for which you pay 2 s. if one defendant, viz. 1 s. for the king's duty, and 1 s. for entering the appearance, and 4 d. for every defendant more than one. *Appearance to be entered with filacer.*

Where a defendant is served with a copy of a process, he must cause a common appearance to be entered on the return, or within eight days after such return. *Def. to appear in eight days.* Stat. 5 Geo. 2.

And in case the defendant shall not appear within eight days after the return of such writ or process, the plaintiff, upon making and filing an affidavit of the personal service of such writ or process, may enter a common appearance for the defendant, and proceed thereon, as if such defendant had entered the same. *Or plaintiff may on affidavit of service appear for him and proceed.* Stat. 12 Geo. 1.

In the Common Pleas,

John Doe

against

Richard Roe, late of Petersfield in the county of Southampton, Sadler.

J. S.

*The form of the affidavit.*

*J. S.* of, &c. Gentleman, maketh oath, that he, this deponent, did, on the day of \_\_\_\_\_ at *Petersfield* in the said county of *Southampton*, personally serve the defendant *John Doe* with the writ or process hereunto annexed, by shewing him the said annexed writ or process, and at the same time delivering to him a true copy thereof, on which copy was an *English* notice in writing of the intent and meaning of such service, as by the statute in that case is required.

*Sworn, &c.*

*J. S.*

*Before whom the affidavit is to be made.*

This affidavit is to be filed *gratis*, and may be made before any judge of the court, or commissioner authorised to take affidavits, or before the proper officer for entering the appearance, or his deputy. *Stat. 12 Geo. 1. 5 Geo. 2. vide antea. fol. 68. the rule of Pas. 13 Geo. 2.*

*The eight days to appear exclusive of the return day.*

The defendant has eight days to enter his appearance, exclusive of the return day, e.g. if the writ be returnable on the octave of *St. Hilary*, which is the 20th day of *January*, the plaintiff cannot enter an appearance for the defendant, according to the statute, until the 29th day of *January*.

*Irregularity in plaintiff's entering appearance for defendant to be complained of before judgment.*

If the plaintiff enters an appearance for the defendant before the time the defendant has to enter his appearance is expired, the defendant must complain of this irregularity before judgment is signed.

Of Bail.

**I**N *London and Middlesex* the defendant has four days, exclusive of the appearance day of the return of the writ, to put in bail, and in any other city or county he has eight days exclusive of the appearance day. *Hil. 9 Ann.*

*In London or Midd. 4 days to put in bail.*

*In any other city or county 8 days.*

If the bail be to be put in in town, the filacer, or other officer who issued out the writ, is to attend with the attorney and bail on one of the judges at his chambers, who will take the recognizance, and the filacer or other officer will make an entry of it in his book, which entry he will afterwards draw up in proper form, if there be occasion to sue the bail.

*If in town, to put in bail before a judge at his chambers.*

But care must be taken to apply to the proper filacer or officer, in whose office the bail ought to be entered; for if the bail be entered in a wrong office, the plaintiff may proceed on the bail-bond, and the defendant, before he shall be admitted to plead, shall pay full costs to the plaintiff. *Trin. 1 W. & M.*

*To be entered with the proper filacer.*

And in case of a *Testatum Capias*, bail must be entered, and filed with the filacer of that county wherein the action was first laid, and not with the filacer of that county wherein the defendant was arrested; for otherwise the bail-bond may be assigned; and it is not to be presumed or expected, that the plaintiff's attorney will search with a wrong filacer.

*How on a Testatum Capias.*

## The Attorney's Practice

In case the proper filacer or officer cannot attend, the recognizance may be taken without him, on a piece of parchment properly stampd, viz. with a double twelve-peny stamp.

And in such case you make the entry in this manner.

*The form of a  
recognizance of  
bail taken be-  
fore a judge.*

London. Capias, against T. M. late of London, Car-  
penter, at the suit of W. D. for 100 l. upon  
promise, returnable on the morrow of the Holy  
Trinity.

*Affidavit for 50 l.*

*Bail, W. S. of Pall-Mall in the parish of Saint  
James in the liberty of Westminster and  
county of Middlesex, Esq;*

*C. S. of the same place Apothecary.*

*The defendant bound in 100 l.  
Each of the bail in 50 l.*

Taken and acknowledged  
the day of  
Etc. before

J. S. Attorney for  
the defendant.

If the defendant be not present, and does not enter into the recognizance, then the bail are bound in double the sum the cause of action is sworn to amount unto.

When

*in the Court of Common Pleas.*

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When bail is put in you give notice thereof in writing to the plaintiff's attorney, as follows.

*W. D. plaintiff*  
against  
*T. M. defendant.*

*S I R,*

Take notice, that *W. S.* of [*naming the Notice of bail street and parish particularly, as in the put in. bail-piece or filacer's book*] Esq; and *C. S.* of, &c. apothecary, were this day put in as bail for the defendant in this cause, before Mr. Justice——

*Your humble Servant,*

To Mr. *S. T. At-*  
torney for the  
Plaintiff.

*J. S.*  
Attorney for the Def.  
10 June 1745.

If the plaintiff's attorney excepts to the bail, he marks the exception in the filacer's book or on the bail-piece, and gives notice thereof in writing to the defendant's attorney.

The bail, if excepted to, must justify in four days, or other bail must be added, who can justify within that time, *vide postea*, fol. 90. *Rule Trin. 3 & 4 Geo. 2.*

The defendant's attorney must give notice of adding or justifying or both, as the case shall be, &c.

*W. D. plaintiff*  
against  
*T. M. defendant.*

G 2

*S I R,*

Notice of bail  
added, and of  
justifying.

S I R,

This day before Mr Justice \_\_\_\_\_  
R. H. of, &c. in the county of *Middlesex*, victualler, was added to the  
bail already put in for the defendant  
in this cause, and on *Saturday* morn-  
ing next, the said R. H. and also  
C. S. one of the bail before put in  
for the said defendant in this cause,  
will justify themselves as bail in  
court.

Your humble Servant,  
To Mr. S. T. At- J. S.  
torney for the Attorney for the Def.  
Plaintiff. 11 June 1745.

He must make an affidavit of the ser-  
vice of the notice, and get a serjeant to  
move for leave to justify in court.

Common Pleas. W. D. plaintiff  
against  
T. M. defendant.

Affidavit of the  
service of the  
notice.

A. S. clerk to Mr. J. S. attorney for  
the defendant in this cause, maketh oath,  
that he, this deponent, did on *Wednesday*  
last, being the eleventh day of *June* instant,  
serve Mr. S. T. the attorney for the plain-  
tiff in this cause, with the notice hereunto  
annexed, by delivering a true copy of the  
said notice to the said Mr. T.

Sworn, &c.

A. S.

The

The expence out of pocket is generally  
as follows:

Putting in bail before a judge.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Duty ———	0	2	0
Filacer in some counties	0	6	0
Judge's clerk, in term }	0	12	0
5 s. in vacation }			
			1 0 0

Adding,

Filacer ———	0	5	4
Judge's clerk ———	0	2	0
			0 7 4

Justifying in court,

Affidavit of notice ———	0	2	0
Serjeant's fee ———	0	10	6
Filacer ———	0	5	4
Secondary ———	0	1	0
Cryers ———	0	2	6
			1 1 4
			2 1 8

The judges of this court, or any two of them, whereof the chief justice to be one, may by commissions under the seal of the court, from time to time, empower such persons, other than attornies or solicitors, as they shall think fit, in any of the counties of *England*, to take such recognizances of bail as any person shall be willing to make before them, in any action or suit

*Judges may appoint commissioners to take bail.*

*The recognizance to be transmitted to one of the judges.*

depending in this court, in manner and form as the judges of the court have used to take the same; which recognizance shall be transmitted to one of the judges, who upon affidavit made of the due taking thereof shall receive the same, upon payment of the usual fees: Which recognizance shall be of the like effect as if taken *de bene esse* before any judge of the court. Stat. 4 W. & M. c. 4.

*Fee for taking recognizance*  
2 s.

*Judges of assize may take the recognizance of bail.*

For taking this recognizance the commissioner is to take 2 s. and no more.

The judges of assize may take recognizances of bail, which shall be transmitted and received as aforesaid, without oath. Same Stat.

*Where bail may justify by affidavit.*

The bail may justify themselves by affidavit before the commissioner, unless they live in London or Westminster, or within ten miles thereof.

*Bail put in before a judge must justify in person.*

Bail put in before a judge must justify in person, and cannot justify by affidavit.

Upon this act for taking bail by commissioners in the country the court has made several rules, viz.

*Of putting in bail before a commissioner.*

Before any bail shall be taken by virtue of this act, a true copy in parchment of the writ, to which the defendant is to put in bail, shall be brought to the commissioners, and on the said copy the recognizance or bail-piece shall be ingrossed in this or the like form, as the case shall be.

Bail,

*in the Court of Common Pleas.*

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Bail, *John Denn* of *Blackbarnsley* in *the recognizance.*  
the parish of *Settle* in the county of  
*Tork*, Gentleman, and *Richard Penn*  
of the same place, gentleman.

The party himself in 20*l*.

Each of the bail in 10*l*.

Taken and acknowledged on the  
day of \_\_\_\_\_ in the year of our  
Lord \_\_\_\_\_ conditionally (or *de bene*  
*esse*) before me *A. B.* one of the commis-  
sioners.

The condition of the recognizance.

You (*naming the defendant, if present*)  
do acknowledge to owe unto the plaintiff  
20*l*. You (*naming the bail*) do severally  
acknowledge to owe unto the plaintiff the  
sum of 10*l*. a-piece, to be levied upon  
your several goods and chattels, lands and  
tenements, upon condition, that if the de-  
fendant be condemned in the said action,  
he shall pay the condemnation-money, or  
render himself a prisoner to the *Fleet* for  
the same; and if he fail so to do, you  
(*naming the bail*) do undertake to do it  
for him.

Affidavit of the due taking such bail  
shall be made before some judge of this  
court to whom the bail shall be transmitted,  
or before some person having power to  
take affidavits in causes depending in this  
court. *Pas. 5 W. & M.*

All bails taken by any commissioner  
within the distance of 40 miles from the

G 4.

cities

*Bail taken by a commissioner within 40 miles of London, to be transmitted in 10 days; above 40 miles in 20 days; Unless, &c.* cities of *London and Westminster*, shall be transmitted to the lord chief justice, or one of the judges of the court within ten days after the taking thereof; and all bails taken by any commissioner above the distance of 40 miles from the said cities of *London and Westminster*, shall be transmitted within twenty days after the taking thereof, unless the justices shall be on the circuits, and then as soon as one of them shall return to *London* out of his circuit. *Same Rule.*

*And filed with the proper officer, or plaintiff to proceed on the bail-bond.* And after such transmission shall be forthwith filed with the proper officer to be entered upon record, otherwise shall be as no bail, and the plaintiff to be at liberty to proceed on the bail-bond as if no such bail had been put in; and the defendant, in case he be admissible to plead to the original action, shall not be admitted so to do, unless he first pay the full costs to the plaintiff for the prosecution on the bail-bond, and plead as of the time when the bail should have been duly entered. *Hil, 6 Geo. 1.*

*On bail transmitted, judge's clerk to take the fees for the entry.* Bails taken before commissioners and transmitted to and allowed by a judge, shall be delivered to the clerk of the judge, who shall allow the said bail, which clerk shall take the fees due to the proper officer for the entry thereof, and forthwith deliver the same to be filed. *Mich. 13 Geo. 1.*

All

All bails taken before commissioners in the country shall be transmitted and filed with the proper officer, according to the rule *Hil. 6 Geo. 1.* And no such bail shall be received or filed, unless transmitted within the respective times appointed by the said rule, without leave of the court.

*No bails to be received or filed, unless transmitted within the times aforesaid.*

*Mich. 6 Geo. 2.*

If the bail be not filed within the times above directed, application must be made to the court, the judges in the treasury will not give leave to file it, the rule saying, it shall not be filed without leave of the court.

*If not filed in time, application to the court; no leave in the treasury.*

Every defendant's attorney shall give notice to the plaintiff's attorney of the taking such bail within four days after the caption thereof. *Mich. 13 Geo. 1.*

*Notice of such bail to be given within 4 days.*

Every commissioner is to have a book for entering the names of the defendant and his bail, and of the plaintiff, as in the bail-piece, and the time of taking thereof; and the name of him by whom such bail shall be transmitted.

*Name of defendant and his bail to be entered in commissioner's book.*

The plaintiff's attorney may repair to such book for the names of the bail, to the end he may inquire of the sufficiency of them; and if they are found insufficient, may except against them within twenty days after the said bail is transmitted and notice to the plaintiff or his attorney of taking thereof; and in that case the defendant must either put in better bail, or the cognisors of such bail must justify themselves in open court by affidavit made before

*Where plaintiff's attorney to search.*

*Exception to be within twenty days after bail transmitted, and notice.*

*And then better bail or bail to justify.*

before

before the commissioner that took the said bail, or by oath made in court, or before one of the judges. *Pas. 5 W. & M.*

*Bail excepted to, to be perfected within 4 days.*

If special bail be excepted to, the defendant shall perfect his bail within four days after exception taken, and in default thereof the plaintiff may proceed on the bail-bond. *Trin. 3 & 4 G. 2.*

*Additional bail are to justify, if not excepted to.*

If the plaintiff excepts to the bail, and the defendant adds further bail, the additional bail must justify themselves in court within the four days, without waiting for the plaintiff's excepting to them, for the plaintiff is not bound to except to additional bail; and in default of justifying, as aforesaid, he may proceed on the bail-bond.

*Bail excepted to in the vacation to justify within the first four days of the next term.*

If the plaintiff except to bail in the vacation, and will not be satisfied with justification before a judge, the bail must justify within the first four days of the next term at least, but it is safer to justify on the first day of the term.

*What notice to be given of justifying.*

Notice to justify must be given two days before the day of justification; and a *Sunday* shall not be reckoned as one of the two days; notice on the *Saturday* to justify on the *Monday* is insufficient.

*No attorney to be bail.*

No attorney of this or any other court, or any person practising as such, shall be bail in any suit or action depending in this court. *Mich. 6 Geo. 2.*

*No sheriff's officer.*

No sheriff's officer, bailiff, or other person concerned in the execution of process shall be permitted or suffered to become bail

bail in any action or suit depending in this court. *Same term.*

In case the defendant does not put in bail by the time limited by the course of the court, the plaintiff may take an assignment of the sheriff's bail-bond, if he approves of the sufficiency of the obligors.

The sheriff, at the request and costs of the plaintiff or his lawful attorney, shall assign to the plaintiff the bail-bond by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so indorsed be duly stamped before any action brought thereon. *Sheriff on request to assign bail-bond to plaintiff.* Stat.

4 & 5 Ann.

And if the bail-bond be forfeited, the plaintiff may after such assignment bring an action thereupon in his own name, and the court may by rule give such relief to the plaintiff and defendant in the original action, and to the bail on the said bond, as shall be agreeable to justice and reason, and such rule of court shall have the effect of a defeasance to such bail-bond. *Who may bring an action in his own name.*

*Same Stat.*

No bail-bond taken in London or Middlesex shall be put in suit till four days exclusive of the appearance-day of the return of the writ on which the bail-bond was taken; and no bail-bond taken in any other city or county shall be put in suit till after eight days exclusive of the appearance-day of the return of the process, and all

all proceedings to the contrary thereof shall be set aside with costs. *Hil. 9 Ann.*

*E. G.* In a country cause if the writ be returnable *tres Michaelis*, the defendant has to the 31st of *October* to put in bail, and the bail-bond cannot be put in suit till the first of *November*.

*Rule for sheriff to return the writ.*

*And like to bring in the body.*

*Sheriff not returning a writ within six days after rule, to pay costs.*

If the plaintiff does not approve of the bail taken by the sheriff, he may give the sheriff a rule to return the writ, and on his returning a *Cepi Corpus* he may give him a like rule to bring in the body, and in default thereof may have an attachment against him.

If any sheriff, under-sheriff, or his deputy, or any other officer having the return of any process issuing out of this court, or of any precept or warrant thereupon, shall neglect or refuse to return the same within six days after service of a rule of this court for that purpose, such sheriff, under-sheriff, &c. shall be liable to pay the costs occasioned by such neglect. *H. 1. 8 Geo. 1.*

*An action lies against him for a false return.*

And if the sheriff returns, that the defendant *Non est inventus* in his bailiwick, when he had really arrested him, an action may be brought against him for a false return.

*If the same bail be put in above as given to the sheriff, the plaintiff may except,*

Formerly, If the bail taken by the sheriff was put in above, the plaintiff could not except against such bail; but the same stood good and absolute: But now,

In all cases wherein bail-bonds shall be taken, and the same bail shall be put in above,

above, the plaintiff may except against such bail. *Mich. 6 Geo. 2.*

And unless the bail so excepted against shall justify themselves, or other bail be added, who shall justify themselves within the time limited by the rules of the court, the plaintiff may take an assignment of the bail-bond, and proceed thereon notwithstanding he excepted to the same persons when put in as bail above.

Two persons at least must become bail for the defendant; the putting in one bail only is esteemed as no bail, not even sufficient to ground a surrender upon, tho' it be done immediately; and the plaintiff in such case may proceed on the bail-bond notwithstanding the surrender; for the defendant cannot be surrendered until the bail is complete.

If an action of debt be brought on a recognizance of bail, the writ must be served four days before the return; and the bail may surrender the principal on the *Quarto die post* of the return *sedente curia*, but not after the court is risen.

Though an action of debt on a judgment may be brought pending a writ of error in the original action, and the court will let the plaintiff proceed to judgment, and only stay execution till the writ of error is determined; yet if an action of debt be brought on a recognizance of bail pending a writ of error in the original cause, the court will stay proceedings in such cause without the bail giving judgment,

*and proceed on the bail bond, notwithstanding, if they don't justify.*

*One bail seemed as no bail.*

*Defendant cannot surrender till bail is complete.*

*Debt on recognizance of bail, writ to be served four days before return.*

*What time to surrender thereon.*

*No action on recognizance of bail, pending a writ of error in the original cause.*

ment, for by the judgment the bail would be barred from surrendring the principal.

*When bail may  
surrender on  
Sci. fa.*

If the plaintiff proceeds by *Scire facias* against the bail, in case of one *Scire facias* return'd *Scire feci*, the bail may surrender the principal on the appearance-day of the return of the *Scire facias*; and in case of two *Scire facias*'s with *Nibils* return'd, the surrender must be on the appearance-day of the return of the last *Scire facias*, *sedente curia*.

*Ca. fa. in or-  
der to charge  
the bail should  
lie in the sher-  
riff's office 4  
days.*

A *Capias ad satisfaciendum* against the principal in order to charge the bail, should be left with the sheriff four days before the return.

*And have 15  
days between  
Teste and re-  
turn.*

Such *Capias ad satisfaciendum* should have fifteen days between the *Teste* and return; v. *antea* fol. 59.

*Badreturnable  
pending a writ  
of error.*

A *Capias ad satisfaciendum* returnable at a time when a writ of error is depending, is not a sufficient foundation to proceed against the bail.

*Bail can't be  
witness for the  
defendant.*

One who is bail cannot be a witness in the cause for his principal, therefore if the defendant should have occasion to examine one of his bail as a witness at the trial, he must make an affidavit that such bail is a material witness for him in the cause, and thereupon move the court that such bail may be struck out of the bail-piece, on adding and justifying another in his stead.

*Bail jointly  
and severally  
for 140l. ver-  
dict for 300l.  
each shall pay  
140l.*

In an action of assault and battery the plaintiffs procured a judge's order to hold the defendant to bail for 140l. whereupon the defendant became bound in 280l. and

the bail jointly and severally in 140*l*. The plaintiff had a verdict for 300*l*. and brought separate actions on the recognizance against the bail. \* The bail moved the court that on payment of one sum of 140*l*. and costs, proceedings might be stayed, and compared this to an action on a bond; but the plaintiffs insisted, that there is a difference, for in a bond the condition is to pay the money; and if one obligor pays it, the other shall be discharged, for the condition is complied with; but in a recognizance the condition is not satisfied till the damages recovered be paid, or the defendant surrendered. And it was held, that the bail being jointly and severally bound, the actions against them could not be discharged unless the condition of the recognizance was performed, *viz.* that the defendant should pay what was recovered, or surrender himself to the *Fleet*. *Calverack & Ux. v. Pinbero, Mich. 12 G. 2.*

## *Of Declarations.*

**T**HE next thing the plaintiff's attorney has to do is to prepare his declaration:

And note, That if the action be in

*Summonitus*  
and *attachi-*  
*tus.*

<i>Debt,</i>	<i>Account,</i>
<i>Detinue,</i>	<i>Annuity, or</i>
<i>Covenant,</i>	<i>Replevin,</i>

It

It must be said in the declaration, the defendant was summoned to answer, &c.

If the action be in

Case,  
Trespass,

Trover, or  
Ejectment,

Then the declaration is, that the defendant was attached to answer, &c.

On a *Clausum fregit* may declare in any county, or for any action.

The like on a *Clausum fregit*, with an *Acetiam*.

On a common *Clausum fregit*, the plaintiff may declare in any county, or for any cause of action, for that process is only to bring the party into court.

On a *Clausum fregit* with an *Acetiam* in debt, case, or any other action, the plaintiff may declare in any county, or for any cause of action whatsoever, but then he will lose his bail.

On a *Præcipe quod reddat* must declare in debt.

Except it be by the by.

The like on an attachment of privilege.

In a *Præcipe quod reddat* in debt the plaintiff can declare in no other action but debt, except he deliver a declaration by the by, and in that case he must first deliver a declaration in the original action.

On an attachment of privilege *de placito debiti*, the plaintiff cannot declare in case, or for any cause of action but debt, unless the declaration be delivered by the by, and in that case the plaintiff must first declare in debt, for an attachment of privilege is in the nature of

On declaration by baron and feme, the husband can't declare by the by at his own suit.

a special original. If an action be brought by baron and feme, and a declaration be delivered, in that action, the husband cannot there-

upon deliver a declaration by the by at his own suit.

When you have drawn the declaration *Of delivering the declaration.* for your assistance, wherein you may have recourse to the following precedents, you ingross a copy of it on double penny stamp'd paper, and deliver it to the defendant's attorney, who must pay you for the same at the rate of 4 d. per sheet, (reckoning seventy-two words to a sheet) besides the king's duty, and eight-pence for filing his warrant of attorney, and then you give a rule for the defendant to plead, with the secondary of that prothonotary with whom you enter your proceedings; for this rule you pay 1 s. 4 d. viz. 1 s. for the king's duty, and 4 d. to the secondary for the rule.

Before the plaintiff's attorney can sign *Plea to be demanded in writing.* judgment, he must by note in writing demand a plea of the defendant's attorney, except where the plaintiff has entered an appearance for the defendant.

Upon process returnable the first, or any other return of a term, the plaintiff has *Plaintiff has till the end of the second term, to deliver his declaration.* time to the end of the next ensuing term to deliver his declaration to the defendant's attorney, or to leave the same in the office; and the defendant's attorney *Defendant after second term may give a rule to declare.* (having entered his appearance) may, at the end of the ensuing term, or in four days after, give a rule for the plaintiff to declare, and having demanded a declaration by note in writing of the plaintiff's *Declaration to be demanded in writing.* attorney, may at any time in the vacation

*And for want thereof Non Prof. to be signed.*

of such ensuing term, after the rule for declaring is out, sign his *Non Prof.* for want of a declaration, and not afterwards; and the plaintiff shall not, without leave of the court, have any longer time to declare than as aforesaid, other than the time limited by the defendant's rule. *Hil.*

*9 Annæ.*

*Declaration to be demanded of the agent, and not of the country attorney.*

On a rule given to declare a declaration was demanded of the attorney in the country, by his own agreement, but the *Non Prof.* signed for want of a declaration was held to be irregular, for the declaration should have been demanded of the agent in town.

*Where no rule the plaintiff has till the effoin-day of the 3d term to declare.*

Where the defendant at the end of the second term does not give a rule for the plaintiff to declare, the plaintiff has till the effoin-day of the third term to deliver his declaration.

*Plaintiff has 2 terms to declare after bail complete.*

It has been held, that the plaintiff has two terms to declare in, after bail is put in and perfected.

*Where the plaintiff appears for the defendant.*

Where a copy of a process is served on any defendant, and an appearance is entered for such defendant by the plaintiff's attorney, pursuant to the late act for preventing frivolous and vexatious arrests, the plaintiff's attorney shall leave a copy of the declaration in the office, and give notice thereof to the defendant, by delivering an *English* notice written in a secretary hand to such defendant, or by leaving the same at his last or most usual place of abode, signifying the nature of such

*Declaration to be left in the office.*

*And notice left for def. at his last place of abode.*

such action, at whose suit it is prosecuted, and in whose office such declaration is left; Declaration and from the time of giving such notice well delivered such declaration shall be deemed well de- from time of livered to such defendant. *Mich. 1 Geo. 2. notice.*

And in case such defendant, after such notice given, shall not plead by the time the rule for pleading is out, the plaintiff in such case may sign his judgment (a rule to plead being first given) without any other or farther calling for a plea. *And if def. don't plead may sign judgment without farther calling for a plea.* Same Rule. See Tit. Inquiry.

Where the defendant fails to enter his appearance, and the plaintiff enters it for him, he may proceed according to the above rule, tho' the defendant may have employed an attorney to appear and plead for him, and have given the plaintiff notice of it, and the plaintiff need not call on such attorney for a plea. *Where the plaintiff appears for the def. he may proceed without taking notice of any attorney the def. may have employed.*

On all process returnable the first or second return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within twenty miles of *London*, the defendant shall plead within four days after such declaration delivered without any imparlance, and such declaration may be delivered *de bene esse*. *When the def. shall plead in four days.* *When decl. may be delivered de bene esse.* *Mich. 3 Geo. 2.*

And in case the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, the defendant shall plead within eight days after the declaration delivered, and in default of pleading

ing as aforesaid, the plaintiff may sign his judgment. *Same Rule.*

*Such declarations to be delivered with notice when to plead.*

And all declarations in *London* and *Middlesex* delivered pursuant to the above rule, on process returnable the first or second return of any term, where the defendant lives within twenty miles of *London*, shall be delivered; with notice to plead to such action within four days *after* such declaration delivered; and all declarations where the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, shall be delivered with notice to plead within eight days *after* such declaration delivered. *Pasch. 3 Geo. 2.*

*Decl. may be delivered de bene esse before time for bail or appearance expired.*

The plaintiff may deliver a declaration *de bene esse* before the time the defendant has to put in bail, or enter a common appearance, is expired, but not afterwards.

*On declaration de bene esse judgment can't be signed till appearance entered.*

In an action which requires only a common appearance, if a declaration be delivered *de bene esse*, the plaintiff can't sign judgment for want of a plea, till the time the defendant had to enter his appearance

*The four or eight days to plead are inclusive, and the notice may be given accordingly.*

Though by the word *after* in the above rules they seem to exclude the day of the delivery of the declaration, the construction of them must be governed by the rule to plead, which is inclusive of the day on which it is given. And therefore if a declaration be left in the office *de bene esse* on the first day of a term, notice thereof may be given on the same day to plead within the first four days of the term (or first eight days of the term, if the defendant has eight days to plead, and not say within the first four (or eight) days after the declaration delivered.

is expired; as suppose the *Capias* is returnable *Octab. Hilar.* and a declaration is left in the office *de bene esse* on the 23d of *January*, and notice and a rule to plead is given the same day, the rule will be out on the 26th, but as the defendant has eight days to appear, exclusive of the return-day, the plaintiff can't sign judgment for want of a plea, till the 29th of *January*, and then an appearance must be first entered, either by the defendant or the plaintiff for him.

Where a declaration is left in the office *de bene esse*, there should be an indorsement on it, signifying that it is left conditionally, or *de bene esse*. *Indorsement on declaration de bene esse.*

To have a plea the same term the declaration should be delivered four days (exclusive of the day of the delivery) before the end of the term. *Decl. to be delivered 4 days exclusive before the end of the term.*

All declarations and pleadings must be delivered, and all demands thereof, and all notices given, before nine of the clock in the evening. *Mich. 9 Geo. 2.*

A copy of a declaration delivered to the defendant, his attorney being known, is a bad delivery of the declaration. *Decl. delivered to def. his attorney being known, is bad.*

If the attorney be not known, the declaration may be left in the office, and notice given to the defendant.

Where a country attorney is concerned for the defendant, the declaration or notice of its being left in the office (as the case shall be) must be given to the agent, and not the country attorney. *Must be delivered to the agent, and not to the country attorney.*

*Decl. is only well delivered from the time of notice.*

The declaration is only well delivered from the time of notice, and therefore if notice of the declaration be given after the rule to plead is given, it is irregular.

*Notice to plead in 4 days when it should be 8, irregular.*

If such defendant has eight days to plead, and the declaration be delivered with notice to plead in four days, it is irregular, though judgment be not signed till the eight are expired.

*Notice need not set forth the whole declaration.*

On a motion to set aside judgment, for that the notice of the declaration mentioned, that the declaration was for goods sold and delivered, and materials found, whereas there was a count in the declaration for money lent, which was not mentioned in the notice. Upon reading the rule of court, which is, that the plaintiff shall give notice of the nature of the action, the notice was held to be good; and it was said, that it is not necessary to set forth the whole declaration. *Turner, Administrator, v. Bourns, Pasch. 2 Geo. 2.*

*Only the nature of the action.*

It is only necessary to set forth the nature of the action, as in debt or in case, without mentioning for what, for that will appear by the declaration itself. *Skin against Gwinel, Pasch. 5 Geo. 2.*

*Irregularity in delivering declaration to be complained of two days before executing inquiry.*

If there be any irregularity in the delivery or notice of the declaration, the defendant must apply to the court two days before the day appointed for executing the writ of inquiry.

*Precedents of Declarations.*

Cooke.

*Easter Term in the Eleventh Year  
of the Reign of King George  
the Second.*

Middlesex, *P. F.* late of *Westminster* in  
to wit, the said county of *Middle-* *On a bond.*  
*sex*, doctor of phyfic, otherwise called  
*P. F. de paroch. sancti Martini in Prat.*  
*Westmonasterii, Medicinæ Doctor*, was sum-  
moned to answer *J. H.* of a plea, that he  
render to him seventy pounds, which he  
owes to him, and unjustly detains, and so  
forth. And wherefore the said *J.* by *A. B.*  
his attorney says, That whereas the said  
*P.* on the nineteenth day of *April*, which  
was in the year of our Lord one thousand  
seven hundred and twenty-seven, at *West-*  
*minster* aforesaid in the county of *Mid-*  
*dlesex* aforesaid, by his certain writing ob-  
ligatory acknowledged himself to be bound  
to the said *J.* in the aforesaid sum of se-  
venty pounds, to be paid to the said *J.*  
when he should be thereunto required:  
Nevertheless the said *P.* although often  
required, hath not paid the said seventy  
pounds to the said *J.* but hath hitherto  
refused, and still doth refuse to pay the  
same to him; wherefore he says he is the  
worfe, and hath damage to the value of  
twenty pounds; and therefore he brings

H 4

suit

suit, and so forth. And he brings here into court the aforesaid writing, which testifies the said debt in form aforesaid, the date whereof is the day and year above-mentioned, and so forth.

Borret.

*Michaelmas Term in the Twelfth Year of King George the Second.*

*On a Mutu-  
atus.*

London, *W. S.* late of London, Esq; was to wit, summoned to answer *R. F.* Gent. of a plea, that he render to him 50*l.* which he owes him, and unjustly detains, &c. And whereupon the said *R. F.* by *L. R.* his attorney, says, that whereas the said *W. S.* on the      day of      in the year of our Lord one thousand seven hundred and thirty-seven, at London aforesaid in the parish of *St. Mary Le Bow* in the ward of *Cheap*, borrowed of the said *R. F.* the said 50*l.* to be paid to the said *R. F.* when he the said *W. S.* should be thereunto required; yet the said *W. S.* although often required, has not yet paid the said 50*l.* to the said *R. F.* but has hitherto intirely refused, and still does refuse, to pay him the same; wherefore the said *R. F.* says, that he is injured, and has damage to the value of 20*l.* and thereupon he brings suit, &c.

You seldom declare in debt for money borrowed, but where judgment for a debt without bond is confessed by virtue of a warrant

warrant of attorney, but declare in case on an *Indebitatus assumpsit*.

Cooke.

Hilary Term in the Twelfth Year of the Reign of King George the Second.

Middlesex, *T. T.* late of Westminster in the *Indebitatus*  
*to wit,* county of Middlesex, dealer *assumpsit for*  
in coals, was attached to answer *T. D.* in *money lent.*  
a plea of trespass on the case: And where-  
upon the said *T. D.* by *L. R.* his attorney  
complains, that whereas the said *T. T.* on  
the first day of *January* in the year of our  
Lord one thousand seven hundred and  
thirty-eight, at the parish of *St. Clement*  
*Danes* in the county of *Middlesex*, was in-  
debted to the said *T. D.* in the sum of 100*l.*  
lawful money of *Great Britain*, for the  
like sum of money before that time lent  
by the said *T. D.* to the said *T. T.* at his  
special instance and request, and being so  
indebted, the said *T. T.* in consideration  
thereof afterwards, *to wit,* the same day  
and year, at the parish aforesaid in the  
county aforesaid, undertook, and then and  
there faithfully promised the said *T. D.*  
that he the said *T. T.* would well and truly  
pay the said 100*l.* to the said *T. D.* when  
he the said *T. T.* should be thereunto af-  
terwards required: *Nevertheless* the said *Breach.*  
*T. T.* not at all regarding his said promise  
and undertaking made in form aforesaid,  
but contriving and fraudulently intending  
in

in this behalf craftily and subtilly to deceive and defraud the said *T. D.* hath not paid the said sum of money, or any part thereof, to the said *T. D.* (although thereunto required by the said *T. D.* to wit, on the said first day of *January*, and often afterwards, at the parish aforesaid in the county aforesaid) but hath intirely refused, and still doth refuse, to pay him the same, to the damage of the said *T. D.* of 120*l.* And thereupon he brings suit, &c.

Indeb. aff. for  
money had and  
received to the  
plaintiff's use.

*As before, to —* For that whereas the said *O. B.* on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of his present majesty's reign at the parish of \_\_\_\_\_ in the county of *Middlesex*, was indebted to the said *S. A.* in 30*l.* lawful money of *Great Britain*, for so much money by the said *O. B.* before that time had and received to the use of the said *S. A.* and being so indebted, the said *O. B.* in consideration thereof afterwards, to wit, on the same day and year, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *S. A.* that he the said *O. B.* would well and truly pay the said 30*l.* to the said *S. A.* when he the said *O. B.* should be thereunto afterwards required: *Nevertheless, &c. as before.*

Indeb. aff. for  
money laid out.

*As before, to —* For that whereas the said *T. M.* on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of his present majesty's

jeſty's reign, at the pariſh of *St. Mary Le Bow* in the county of *Middleſex* was indebted to the ſaid *C. M.* in 20*l.* lawful money of *Great Britain*, for ſo much money by the ſaid *C.* for the uſe of the ſaid *T.* and at his ſpecial inſtance and requeſt before that time paid, laid out and expended, and being ſo indebted the ſaid *T.* afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, undertook, and then there faithfully promiſed the ſaid *C.* that he the ſaid *T.* would well and truly pay the ſaid 20*l.* to the ſaid *C.* when he the ſaid *T.* ſhould be thereunto afterwards required: *Nevertheless, &c.*

Cooke.

*Eaſter Term in the Eleventh Year  
of King George the Second.*

London, *T. M.* late of London, Merchant, *On an in-  
to wit,* was attached to answer *J. S.* *land bill of  
in a plea of treſpaſs on the caſe: And exchange by  
whereupon the ſaid J. S. by M. C. his at- the drawee  
torney complains, that whereas the ſaid against the  
T. M. on the 17th day of May in the year Lilly's Ent.  
of our Lord 1733. at London in the pariſh 44, 55, 90.  
of St. Mary Le Bow in the ward of Cheap  
(he being then a perſon trading, merchan-  
dizing, and uſing commerce at London a-  
foreſaid) according to the uſage and cu-  
ſtom of merchants from the time to the  
contrary whereof the memory of man is  
not, made his certain firſt bill of exchange  
in*

in writing subscribed with his own hand, bearing date the same day and year, and directed the said bill of exchange to one *J. H.* (the said *J. H.* then being a person trading, merchandizing, and using commerce to foreign parts, namely, at

) by which said bill of exchange the said *T. M.* required the said *J. H.* twenty-one days after sight thereof, to pay his said first bill of exchange to the said *J. S.* (by the name of *J. S.* merchant at *London*) or order, 112*l.* 5*s.* value of him, with or without advice from the said *T. M.* which said bill of exchange afterwards, that is to say, on the 15th day of *May* in the year of our Lord aforesaid, at

aforesaid, was shewn to the said *J. H.* for his acceptance thereof, and the said *J. H.* did not accept the said bill, but then and there refused to accept the same, of which the said *T. M.* afterwards, that is to say, on the fifteenth day of *June* in the year of our Lord last mentioned, at *London* aforesaid in the parish and ward aforesaid, had notice, and by reason of the premisses, and also according to the usage and custom of merchants, he the said *T. M.* was and became liable to pay unto the said *J. S.* the said sum of 112*l.* 5*s.* in the said bill of exchange mentioned; and being so liable, he the *T. M.* afterwards, that is to say, on the same day and year last mentioned, at *London* aforesaid in the parish and ward aforesaid, undertook, and to the said *J. S.* then and there

*Bill not accepted.*

there faithfully promised, that he the said *T. M.* would well and faithfully pay and satisfy to the said *J. S.* the said 112*l.* 5*s.* in the said bill of exchange mentioned: *Nevertheless, &c.*

It is usual and necessary to lay diverse counts in one declaration, where the plaintiff has various demands against the defendant, as on a promissory note, for goods sold, money lent, &c. and even where he has but one demand; as, suppose for goods sold and delivered, it will be proper to lay two counts, as an *Indebitatus assumpsit*, and a *Quantum valebant*, whereupon if he fails of proving the price agreed on, he may prevail on the *Quantum valebant* upon proving the delivery of the goods, and the value of them at that time; and as to the promise in such cases there is no occasion to prove it; the law implies it upon proof of the debt.

Borret.

*Hilary Term in the Eleventh Year  
of the Reign of George the Se-  
cond.*

Middlesex, *R. G.* late of the parish of St. *On a promissory note.*  
to wit, *R. Andrew, Holborn*, in the  
county of *Middlesex*, druggist, was at-  
tached to answer *S. N.* of a plea of tref-  
pass on the case: And whereupon the said  
*S. N.* by *L. R.* his attorney complains, that  
whereas the said *R. G.* on the tenth day  
of

of *December* in the eleventh year of his present majesty's reign, at *Westminster* in the county of *Middlesex*, made his note in writing subscribed with his own hand, commonly called a promissory note, bearing date the same day and year, by which said note the said R. G. promised to pay to the said S. N. or his order, ten days after the date of the said note, the sum of fifty pounds, for value received by him the said R. G. By reason whereof, and also by force of the statute in such cases made and provided, the said R. G. became liable to pay to the said S. N. the said sum of 50*l.* in the said note mentioned, according to the tenor and effect of the said note; and being so liable, the said R. G. in consideration thereof, afterwards, to wit, on the same day and year, at *Westminster* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said S. N. that he the said R. G. would well and truly pay to the said S. N. the said 50*l.* in the said note mentioned, according to the tenor and effect of the said note. And whereas the said R. G. afterwards, on the first of *January* in the year aforesaid, at *Westminster* aforesaid in the county aforesaid, was indebted to the said S. N. in 100*l.* of lawful money of *Great Britain*, for diverse goods, wares and merchandizes, by the said S. N. before that time sold and delivered to the said R. G. at his special instance and request; and being so indebted, the said R. G. in

Indeb. aff. for  
goods sold and  
delivered.

consideration thereof, afterwards, *to wit*, the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would well and truly pay the said 100*l.* to the *S. N.* when he the said *R. G.* should be thereunto required. *And also* Quantum valebant ibidem. whereas afterwards, *to wit*, the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, in consideration that the said *S. N.* had before that time sold and delivered to the said *R. G.* at his like special instance and request, diverse other goods, wares and merchandizes, he the said *R. G.* undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would, when he should be thereunto required, well and truly pay to the said *S. N.* so much money as the goods, wares and merchandizes last abovementioned were at the time of the sale and delivery thereof reasonably worth. And the said *S. N.* in fact saith, that the goods, wares and merchandizes last above mentioned were, at the time of the sale and delivery thereof, reasonably worth other 100*l.* of like lawful money of *Great Britain*, *to wit*, at *Westminster* aforesaid in the county aforesaid, of which the said *R. G.* then and there had notice. *And also* whereas the said *R. G.* afterwards, *to wit*, on the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, accounted In simul computasset.

*Breach.*

ed together with the said *S. N.* concerning diverse sums of money before that time due, and unpaid by the said *R. G.* to the said *S. N.* and the said *R. G.* was upon the said account then and there found in arrear to the said *S. N.* in 76*l.* 12*s.* 6*d.* of like lawful money of *Great Britain*; and the said *R. G.* being so found in arrear, in consideration thereof afterwards, *to wit*, on the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would well and truly pay the said 76*l.* 12*s.* 6*d.* to the said *S. N.* when he the said *R. G.* should be thereunto required: *Nevertheless* the said *R. G.* not at all regarding his said several promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *S. N.* in this behalf, hath not paid to the said *S. N.* the several sums of money aforesaid, or any part thereof, (although afterwards, *to wit*, on the day and year last above mentioned, and often afterwards, at *Westminster* aforesaid in the county aforesaid, he was thereunto required by the said *S. N.*) but hath hitherto intirely refused, and still doth refuse, to pay the same, to the damage of the said *S. N.* of 200*l.* and thereupon he brings suit, &c.

I

In

In an *Infimul computasset* the plaintiff must in his declaration, lay the very day of the account, and the sum agreed upon by both parties to be due.

Thomson.

*Hilary Term in the Twelfth Year  
of the Reign of King George  
the Second.*

Middlesex, *L. K.* late of *Westminster* in *Indeb. ass. for*  
to wit, the county of *Middlesex*, *the use and oc-*  
widow, was attached to answer *J. B. Esq;* *cupation of a*  
of a plea of trespass upon the case, &c. and *house.*  
whereupon the said *J.* by *S. H.* his attorney complains, That *whereas* the said *L.*  
on the first day of *January* in the year  
of our Lord one thousand seven hundred  
and thirty-eight, at *Westminster* aforesaid,  
was indebted to the said *J.* in the sum of  
eight pounds and fifteen shillings of lawful  
money of *Great Britain*, for the use, oc-  
cupation and enjoyment of one messuage,  
with the appurtenances, of the said *J.* si-  
tuate, standing and being in *Westminster*  
aforesaid, for a long space of time then  
past, that is to say, for the space of one  
quarter of a year then past, by the said  
*L.* by the permission of the said *J.* and by,  
from and under the said *J.* at the special  
instance and request of the said *L.* had and  
enjoyed, and being so indebted, she the  
said *L.* in consideration thereof, that is to  
say, on the same day and year aforesaid,  
at *Westminster* aforesaid, undertook, and

Quantum me-  
ruit thereon.

to the said J. then and there faithfully promised to pay to him the said sum of money, when the the said L. should be thereunto afterwards required: *And whereas also* the said L. afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, in consideration that the said J. at the special instance and request of the said L. had permitted and suffered the said L. to have, occupy, possess and enjoy a certain other messuage, with the appurtenances, of the said J. situate, standing and being in *Westminster* aforesaid, for a long space of time then past, that is to say, for the space of one quarter of a year then past, undertook, and to the said J. then and there faithfully promised to pay to him so much money as he had reasonably deserved to have from the said L. for the same; and the said J. avers, that he had reasonably deserved to have from the said L. for the same another sum of eight pounds and fifteen shillings of like lawful money; that is to say, at *Westminster* aforesaid, whereof the said L. afterwards, that is to say, on the same day and year at *Westminster* aforesaid had notice: *And whereas* the said L. afterwards, that is to say, on the same day and year at *Westminster* aforesaid, was indebted to the said J. in the further sum of ten pounds of like lawful money, for the like sum of money by the said J. before that time, at the special instance and request of the said L. and to the use of the

Indeb. ass. for  
money laid out.

the said L. paid, laid out and expended; and being so indebted, she the said L. afterwards, that is to say, on the same day and year, at *Westminster* aforesaid, in consideration thereof undertook, and then and there faithfully promised the said J. that she would well and truly content and pay him the said ten pounds last mentioned, whenever afterwards she the said L. should be there-  
*Breach.*  
 to required: *Nevertheless* the said L. not regarding her said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said J. in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof, although to pay the same to him the said J. she the said L. afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, was requested by the said J. but the said L. to pay the same to him, hath hitherto refused, and doth yet refuse, to the damage of the said J. of ten pounds; And thereof he brings suit, &c.

Cooke.

*Easter Term in the Eleventh Year  
 of the Reign of King George  
 the Second.*

London, *W. H.* late of London, Woollen-Indeb. ass. for  
 draper, was attached to an-  
 swer J. B. of a plea of trespass on the  
 case; and whereupon the said J. B. by  
 I 2 J. W.  
*work done and materials found.*

*J. W.* his attorney complains, that whereas the said *W. H.* on the twenty-first day of *February* in the eleventh year of his present majesty's reign, at *London* in the parish of *St. Mary Le Bow* in the ward of *Cheap*, was indebted to the said *J. B.* in 30*l.* of lawful money of *Great Britain*, as well for work before that time done and performed by the said *J. B.* for the said *W. H.* at his special instance and request, as for diverse materials and necessary things used in and about the said work before that time found and provided by the said *J. B.* at the like special instance and request of the said *W. H.* And the said *W. H.* being so indebted, in consideration thereof, afterwards, *to wit*, on the same day and year, at *London* aforesaid in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *J. B.* that he the said *W. H.* would well and truly pay the said 30*l.* to the said *J. B.* when he should be thereunto required: *And also whereas* afterwards, *to wit*, on the same day and year, at *London* in the parish and ward aforesaid, in consideration that the said *J. B.* had before that time done and performed other work for the said *W. H.* at his like special instance and request, and had found and provided diverse other materials and necessary things used in and about the said last mentioned work, he the said *W. H.* undertook, and then and there faithfully promised the said *J. B.*, that

Quantum meruit thereon.

that he the said *W. H.* would, when he should be thereunto required, well and truly pay to the said *J. B.* so much money as he therefore reasonably deserved to have: And the said *J. B.* in fact saith, that he did therefore reasonably deserve to have of the said *W. H.* other 30*l.* of like lawful money of *Great Britain*, to wit, at *London* aforesaid in the parish and ward aforesaid, of which the said *W. H.* then and there had notice: *Nevertbeles*, &c.

Borrett.

*Hilary Term in the Sixth Year  
of the Reign of King George  
the Second.*

*Southampton*, *J. S.* late of *Croudall* in the *For not repair-*  
*to wit,* *J.* said county of *South-* *ing fences.*

*ampton*, yeoman, was attached to answer *R. D.* in a plea of trespass on the case, and whereupon the said *R. D.* by *J. L.* his attorney complains, That whereas the said *R. D.* on the first day of *October* in the sixth year of his present majesty's reign, was seised, and is still seised in his demesne as of fee, of and in one close called the kitchen-garden, situate, lying and being in *Croudall* aforesaid in the said county of *Southampton*, to which said close called the kitchen-garden, another close in the possession, tenure or occupation of the said *J. S.* called the hop-garden, at *Croudall* aforesaid in the said

county of *Southampton*, lies next and contiguous adjoins, between which said close of the said *R. D.* called the kitchen-garden, and the said close in the tenure or occupation of the said *J. S.* called the hop-garden, there now is, and time out of mind has been, certain pales or fences, which part and divide the said closes the one from the other. *And whereas* the said *J. S.* and all occupiers and possessors of the said close called the hop-garden, for the time being, time out of mind were used and accustomed and ought to make, repair and amend the said pales and fences between the said close of the said *R. D.* called the kitchen-garden, and the said close of the said *J. S.* called the hop-garden, with all necessary reparations and amendments, as often as need should be or require, lest any cattle out of the said close called the hop-garden into the said close called the kitchen-garden should escape and enter, and do damage there: *Nevertheless* the said *J. S.* not ignorant of the premises, but contriving and fraudulently intending the said *R. D.* in this behalf unjustly to damnify, and to deprive him of the whole benefit, profit and advantage of the said close called the kitchen-garden, afterwards, *to wit*, on the said first day of *October* in the said sixth year of his present majesty's reign, and from thence to the first day of *January* in the said sixth year of his said present majesty's reign, the pales and fences separating and dividing

dividing the said close called the kitchen-garden and the said close called the hop-garden one from the other as aforesaid, permitted to remain and continue ruinous, broken, and in decay for want of repair in the same; by means whereof the cattle, hogs and sheep of the said *J. S.* and of diverse other persons to the said *R. D.* unknown, on the said first day of *October*, and on several days and times between the said first day of *October* and the said first day of *January* in the said sixth year of his said present majesty's reign, out of the said close of the said *J. S.* called the hop-garden, into the said close of the said *R. D.* called the kitchen-garden, broke and entered, and the grass, corn, barley, beans, pease, turnips, carrots and cabbages, there then lately growing and being, to the value of nine pounds and nineteen shillings, eat, trod down, and consumed; by means whereof the said *R. D.* the whole benefit, profit, and advantage of his said close called the kitchen-garden, for all that time, *to wit*, from the said first day of *October* in the said sixth year of his said present majesty's reign to the said first day of *January* in the said sixth year of his said present majesty's reign, wholly lost and was deprived of; whereupon the said *R. D.* says that he is wronged, and hath damage to the value of nine pounds and nineteen shillings; And therefore brings his suit.

*Trespass.  
Breaking  
plaintiff's  
close, &c.*

Southampton, *T. W.* late of *Christ-Church* in the county of *Southampton*, Gentleman, was attached to answer *J. P.* of a plea, wherefore with force and arms he broke the close of the said *J. P.* at *L.* in the county aforesaid, and his grass and herbs to the value of 20*l.* there lately growing, with certain cattle grazed, trampled on and consumed, and did him other injuries, to the great damage of the said *J. P.* and against the peace of our Lord the present king; and whereupon the said *J. P.* by *J. G.* his attorney complains, that the said *T. W.* on the first day of *June* in the eleventh year of his present majesty's reign, with force and arms, &c. broke the close of the said *J. P.* at *L.* in the county aforesaid, and the grass, corn, barley, beans, pease, turnips, carrots and cabbages, to the value of 10*l.* there then lately growing, with certain cattle, to wit, with horses, oxen, cows, hogs and sheep, grazed, trampled on and consumed, and other injuries, &c. to the great damage, &c. and against the peace, &c. and whereupon he says that he is injured, and hath damage to the value of twenty pounds; And thereupon he brings suit, &c.

Cooke,

Cooke.

Michaelmas Term in the Eleventh  
Year of King George the Se-  
cond.

Middlesex, *J. M.* late of, &c. was attached *Assault.*  
to wit, *J.* to answer *J. H.* of a plea,  
wherefore with force and arms he assaulted  
the said *J. H.* at *Westminster* in the county  
of *Middlesex*, and beat, wounded and ill-  
treated him, so that his life was despaired  
of, and other injuries did to him, to the  
great damage of the said *J. H.* and against  
the peace of our lord the present king,  
&c. And whereupon the said *J. H.* by  
*J. C.* his attorney, complains, that the  
said *J. M.* on the \_\_\_\_\_ day of \_\_\_\_\_  
in the \_\_\_\_\_ year of his  
present majesty's reign, with force of arms,  
to wit, with swords, staves and knives,  
assaulted the said *J. H.* at *Westminster* in  
the county of *Middlesex*, and beat, wound-  
ed, and treated him ill, so that his life  
was despaired of; and other enormities,  
&c. to the great damage, &c. and against  
the peace, &c. wherefore he says that he is  
injured, and hath damage to the value of  
50*l.* And thereupon he brings suit, &c.

Surry, *J. T.* late of, &c. Brewer, was at- *Trover.*  
to wit, *J.* tached to answer *W. B.* of a  
plea of trespass on the case; and where-  
upon the said *W. B.* by *L. R.* his attorney  
complains, that whereas the said *W. B.* on  
the \_\_\_\_\_

the tenth day of *December* in the fourteenth year of his present majesty's reign, at *Kingston* in the county of *Surry*, was possessed of the following goods and chattels, *to wit*, [*here insert the goods*] to the value of one hundred pounds, as of his own proper goods and chattels; and being so thereof possessed the said *W. B.* casually lost the said goods and chattels out of his hands and possession; which said goods and chattels afterwards, *to wit*, on the said tenth day of *December* in the fourteenth year aforesaid, at *Kingston* aforesaid in the county aforesaid, came by finding to the hands and possession of the said *J. T.* *Nevertheless* the said *J. T.* knowing the said goods and chattels to be the goods and chattels of the said *W. B.* and to him of right to belong and appertain, yet contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W. B.* of the said goods and chattels, has not delivered the said goods and chattels to the said *W. B.* (although often required) but afterwards, *to wit*, on the tenth day of *January* in the fourteenth year aforesaid, at *Kingston* aforesaid in the county aforesaid, converted the said goods and chattels to his own proper use, to the damage of the said *W. B.* of 200*l.* And thereupon he brings suit, &c.

See further precedents among the pleadings at the end of the book, &c.

*Money*

*Money, &c. brought into Court.*

**T**HE intent and consequence of bringing money into court, will appear by the following rule.

Thomson.

*Easter Term in the Fourteenth  
Year of King George the Se-  
cond.*

**S.** Against G. Monday, May 11. It is *Rule for pay-*  
ordered, That the defendant shall *ing money into*  
pay to the plaintiff, or his attorney, three *court.*  
guineas, together with costs to be taxed  
by Mr. Prothonotary Thomson, if the  
plaintiff will accept thereof, and that  
thereupon all further proceedings in this  
action shall be stayed; but if the plaintiff  
will not accept thereof, the defendant shall  
immediately bring the said three guineas  
into this court, and plead the general  
issue; and if upon the trial of the issue  
between the said parties the plaintiff shall  
become nonsuit, or the jury shall not assess  
damages to the plaintiff exceeding the  
said three guineas, then the plaintiff shall  
have no costs, but shall pay to the defen-  
dant or his attorney, costs to be taxed by  
the said prothonotary; which costs shall  
be paid out of the money so brought into  
court, if sufficient for that purpose, and  
the residue, if any, shall be paid to the  
plaintiff. But if the money so paid into  
court

court be not sufficient to pay the said costs, the deficiency shall be made good by the plaintiff. But if upon the trial of the said issue the jury shall assess damages to the plaintiff exceeding the said three guineas, then judgment shall be entered for the plaintiff upon the verdict with costs, and the plaintiff shall have the said three guineas out of court towards satisfaction of such judgment, and may take out execution for the residue.

Entred. Treasury, at the defendant's instance.

By the Court.

Paramor.

*Money not to be brought into court where the plaintiff is an executor or administrator.*

Where the plaintiff is an executor or administrator, money may not be brought into court; but as the reason given is, that an executor or administrator is not by law to pay costs, *Quære* therefore, Whether money may not be brought into court, if the action brought by the executor or administrator be such an action as he might have brought in his own right, and in which he need not have named himself executor or administrator; for in such an action he will be liable to pay costs on a nonsuit, or the like.

*May in debt for rent.*

In debt for rent money may be brought into court.

*In replevin.*

In replevin and avowry for rent the plaintiff was allowed to bring money into court.

In

In covenant and breach for non-pay-  
ment of rent, and for not repairing, &c. *In covenant, Money brought in on one breach only, viz. for non-payment of rent.*  
it was moved to bring in so much for the  
rent, and that as to the other breach the  
plaintiff might proceed as he thought fit,  
and allowed. *Salk. 597.*

In trover, goods not being ponderous  
have been allowed to be brought into  
court; but where they have been ponde-  
rous, the plaintiff has been ordered to shew  
cause why he should not accept them. *Trover.*

The defendant may be admitted to bring  
money into court after the rule to plead  
is out, but not after he has pleaded. *When money may be brought into court.*

The court will not give the defendant  
liberty to bring money into court on some  
of the counts in the declaration, and de-  
mur to the rest; for the reason of making  
the rule for bringing money into court, is  
to prevent vexation, and make an end of  
the cause. *Defendant shall not bring money in to part, and de-mur to the rest of the declaration.*

If a regular judgment be set aside on  
payment of costs, pleading an issuable  
plea, &c. the defendant shall not have  
leave to bring money into court. *Nor after a regular judgment set aside.*

The defendant shall not have leave to  
plead double, and bring money into court;  
for in such case, he must plead the gene-  
ral issue. *Nor on a double plea.*

The defendant had brought money into  
court on the common rule; the plaintiff  
would not accept the money, but proceed-  
ed to trial, and upon the trial was non-  
sued; and the defendant moved in the  
treasury, That in regard the plaintiff was  
out *The plaintiff nonsuited, defendant cannot have the money back.*

out of court by the nonsuit, he might have the money back, and produced the *Posse*. The judges on consideration were of opinion, that the defendant by bringing the money into court had admitted the plaintiff to be intitled to it at all events, and that therefore the defendant could

*On a new action leave for plaintiff to have the money, or let it lie on the common rule.*

not have the money back again: Afterwards the plaintiff brought a new action, and the court made a rule, that the plaintiff might have the money if he thought fit; but if not, that it should remain in court on the common rule in the new action. *Lane v. Wilkinson, Mich. 1 Geo. 1.*

*The like, and leave to bring in more money on the new action.*

The like resolution, and leave for the defendant to bring in more money on a new action being brought. *Dickenson v. Tallowin, Trin. 3 Geo. 2.*

*Plt. admitted to take the money tho' had refused it, and proceeded.*

Where the plaintiff has refused the money and proceeded, the court has admitted him to take the money out of court on paying the defendant his costs subsequent to the bringing the money into court.

*Plt's executor shall have the money, tho' less sum recovered.*

If the plaintiff refuses the money, proceeds to trial, recovers a less sum and dies, his executor shall have the money.

*Alas sum being recovered, def. had back the money towards his costs.*

Where the plaintiff has refused to accept the money, and recovered a less sum, the defendant has been allowed to take back the money towards his costs.

As to laying of Actions and changing the Venue.

**A**LL real and mixed actions, as waste, *Local actions.*  
*Ejectione firmæ, &c.* are local, and must be laid in the county where the land lies; and actions of trespass *Quare clausum fregit* must be laid in the county where the wrong was done.

Actions of debt, detinue, assault, and *Transitory*  
 nuisance, account, &c. are transitory, and *actions.*  
 may be laid in any county where the plaintiff pleaseth.

But by a rule of this court, actions *Case, trespass,*  
 upon the case, trespass for goods, assault *assault or im-*  
 or imprisonment, arising in any *English* *prisonment, to*  
 county, are to be laid in their proper *be laid in their*  
 counties, unless they arise where the ju- *proper coun-*  
 stices of *Nisi prius* seldom come. And *ties, unless,*  
 because trespass or trover for goods, bat- *&c.*  
 tery, imprisonment and slander must needs *Attornies lay-*  
 be notorious in what county they arise, *ing actions of*  
 the attorney knowingly laying them out *trespass, &c.*  
 of their proper county (unless in the cases *in foreign coun-*  
 before expressed, or such other cause as *ties, unless, &c.*  
 shall be allowed by a judge of the court) *to be severely*  
 shall be severely punished. *punished.*  
*Mich. 1654.*

In a transitory action *before the defen-* *Venue may be*  
 dant has pleaded, on motion and affidavit *changed before*  
 made, (That the plaintiff's cause of ac- *plea, on motion*  
 tion (if any) arose in the county of *A.* *and affidavit.*  
 and not in the county of *B.* as laid in the  
 declaration, or elsewhere out of the coun-  
 ty

*Defendant to plead as before. Venue may be changed tho' the defendant comes in on the exigent.* ty of *A.*) the court will change the *Venue* to the proper county; and the defendant must plead to the new action as he should have done to the former without delay; and the *Venue* may be changed in this manner tho' the defendant comes in on the exigent. *Same Rule.*

*Venue can't be changed before appearance.* The defendant cannot move to change *Venue* in any action, until his appearance be entred. *Pas. 24 Car. 2.*

*May move to change the Venue at any time before plea.* Any defendant may move to change the *Venue* at any time before plea plead- ed in all such actions where the *Venue* may be changed by the course of this court, notwithstanding such defendant may have applied for and obtained further time to plead before such motion made. *Mich. 16 Geo. 2.*

*Not to be moved the last day of term.* If it be moved the last day of the term, the court will not make a rule; for the plaintiff has no time to shew cause.

*The Venue not to be changed from a county to a city.* The *Venue* may not be changed from a county at large to a city and county, as from the county of *Middlesex* to the county of the city of *York*.

*Except London.* But the *Venue* has been changed from a county at large into *London*.

*But may from one city and county to another.* It may be changed from one city and county to another city and county, as from the city of *Norwich* to the city of *London*.

*Not to be changed into a county palatine.* The court will not change the *Venue* into a county palatine, as from *Middlesex* to *Lancashire*.

The court will not change the *Venue* in an action of *Scandalum Magnatum*, nor where the plaintiff sues on a bond, or promissory note.

*Nor in an action of Scan. Mag. on a bond or promissory note.*

If a serjeant at law, or an attorney be plaintiff, and sues by *Capias*, and not by writ of privilege, the *Venue* may be changed, for he has thereby waived his privilege, and is to be considered only as a common person.

*If a serj. or attorney sues by Capias, the Venue may be changed.*

If an attorney be defendant, his privilege alone is not a sufficient cause to change the *Venue*.

*An attorney deft. not intitled to have the Venue changed.*

### *Pleas.*

**I**F the defendant answers the plaintiff's declaration, it is either by plea or demurrer, of both which there are two sorts, general and special.

*Pleas,*

A general plea, commonly called the general issue, is a concise direct answer to the declaration ;

*General,*

A special plea contains some particular matter either by way of excuse, justification, or the like.

*Special,*

### *General Issues.*

And the said *P.* by *L. R.* his attorney comes and defends the force and injury when, &c. and saith, That he ought not to be charged with the said debt by virtue of the said writing, because he saith,

*Non est factum to a debt on a bond. If on a bill use the word bill instead of the word writing.*

That that writing is not his deed; And of this he puts himself upon the country.

Nil Debet.

And the said *R.* by *M. S.* his attorney comes and defends the force and injury, when, &c. and saith, That he does not owe to the said *H.* the said 100*l.* or any part thereof, in manner and form as the said *H.* has above declared against him; And of this he puts himself upon the country.

Nil debet in  
debt qui tam.  
Lilly's Entries  
223.

And the said *H.* by *J. B.* his attorney comes and defends the force and injury, when, &c. And says, that he the said *H.* does not owe to our said lord the king, and to the said *J. B.* who as well, &c. the said 400*l.* or any part thereof, in manner and form as the said *J.* who as well, &c. has above declared against him; And of this he puts himself upon the country.

Non detinet  
in debt.  
Brownl. 170.  
Lilly's Entries  
215.

And the said *C. D.* by *E. F.* his attorney comes and defends the force and injury when, &c. and says, that he does not detain from the said *A. B.* the said thirty pounds nor any part thereof in manner and form as the said *A. B.* above complains against him; And of this he puts himself upon the country.

Non assump-  
sit.

And the said *C.* by *K. P.* his attorney comes and defends the force and injury, when, &c. and says that he did not undertake in manner and form as the said *G.* above complains against him; And of this he puts himself upon the country.

Non ass. by  
executors.

And the said *A. B.* and *C. D.* by *E. B.* their attorney, come and defend the force and

and injury, when, &c. and say, that the said *J. W.* [*the testator*] in his life-time did not undertake in manner and form as the said *R.* above complains against them; And of this they put themselves upon the country.

And the said *T. W.* by *J. S.* his attorney *Not guilty in* comes and defends the force and injury, *case.* when, &c. and says, That he is not guilty of the premisses above laid to his charge, as the said *H.* above complains against him; And of this he puts himself upon the country.

And says, that he is not guilty of the *In trespass.* said trespass, as, &c. (*ut supra*).

And says, that he is not guilty of the *In assault.* said trespass and assault, as, &c.

The replication to each of these general *Replication to* issues is this; And the said *D.* doth so *the general* likewise, *i. e.* likewise puts himself upon *issue.* the country.

*Special Pleas.*

And the said *W.* by *J. C.* his attorney *Non assumpsit* comes and defends the force and injury, *infra sex annos.* when, &c. and says, that the said *E.* ought not to have her said action therefore against him, because he says, that he did not undertake at any time within six years next before the day of \* suing

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\* If at the suit of an attorney say, *suing forth the said writ of privilege.* — If against an attorney, say, *exhibiting the said bill.*

forth the original writ of the said *E.* in manner and form, as the said *E.* above complains against him; and this he is ready to verify: Wherefore he prays judgment, whether the said *E.* ought to have her said action therefore against him, &c.

*Replication.*

And the said *E.* says, that she by any thing before alledged ought not to be barred from having her said action against the said *W.* because she says, that the said *W.* at some time within six years next before the day of suing forth the original writ of the said *E.* undertook in manner and form, as the said *E.* above complains against him; and this she prays may be inquired of by the country; And the said *W.* doth so likewise, &c.

*Rejoinder.*

*Actio non  
accrevit infra  
sex annos.*

And the said *S.* by *K. M.* his attorney comes and defends the force and injury, when, &c. and says, that the said *V.* ought not to have his said action against him, because he says the said several causes of action did not accrue, nor did any of them accrue to the said *V.* within six years next before the day of the obtaining the original writ of him the said *V.* and this he is ready to verify: Wherefore he prays judgment if the said *V.* ought to have his said action thereof against him the said *S.*

*Replication.*

And the said *V.* says, that he by any thing above alledged ought not to be barred from having his action aforesaid against him the said *S.* because he says, that the said several causes of action did accrue to the said *S.* within six years next before the day

day of obtaining the original writ of him the said *S.* to wit, on the aforesaid 12th day of *August* in the year of our lord 1738. at the parish aforesaid in the county aforesaid; And this he prays may be inquired of by the country; And the aforesaid *S.* *Rejoinder.* doth so likewise, &c.

And the said *T.* by *J. W.* his attorney *Son assault comes and defends the force and injury, demesne.* when, &c. and as to the coming with force and arms, and whatever is against the peace of our now lord the king, the said *T.* says, that he is not guilty thereof; and of this he puts himself upon the country; And the said *R.* does so likewise, &c. And as to the residue of the said trespass above supposed to be done, the said *T.* says, that the said *R.* ought not to have or maintain his said action thereof against him, because he says, that the said *R.* at the time in which the said trespass is above supposed to be done at *L.* in the county aforesaid, with force and arms, &c. assaulted the said *T.* and then and there would have beaten, wounded, and evilly treated the said *T.* if he the said *T.* had not then and there immediately defended himself against the said *R.* by which the said *T.* then and there defended himself against the said *R.* and so the said *T.* says, if any damage or hurt then and there happened to the said *R.* it was from the assault of the said *R.* and in defence of the said *T.* and this the said *T.* is ready to verify: Wherefore he prays judgment, if the said *R.* ought to have

have or maintain his said action against him, &c.

*Replication de  
injuria sua  
propria.*

And the said R. says, that he by any thing by the said T. above by pleading alledged ought not to be precluded from having his said action against the said T. for the residue of the trespasss, because he says, that the said T. on the day and year above mentioned, at L. aforesaid in the county aforesaid, of his proper injury, without the cause by the said T. above by pleading alledged, assaulted the said R. and beat, wounded and evilly treated him in manner and form as the said R. above complains thereof against the said T. And this he prays may be inquired of by the country; And the said T. does so likewise, &c. Therefore as well to try the said issue, as the said other issue above joined between the said parties, the sheriff is commanded, &c.

*Rejoinder.*

*Venire  
awarded.*

*Justification in  
assault and im-  
prisonment.*

And the said R. J. G. and A. by T. F. their attorney come and defend the force and injury, when, &c. and as to the coming with force and arms, and also the whole trespasss aforesaid, except the assault and imprisonment aforesaid, they say they are Not guilty thereof; And of this they put themselves upon the country; And the said N. does so likewise; And as to the rest of the trespasss aforesaid above supposed to be done, they the said R. J. G. and A. say, That the said N. ought not to have his said action thereupon against them, because they say that before the said time

*Writ issued  
out of B. R.  
against the  
plaintiff.*

in

in which that assault and imprisonment is supposed to be done, to wit, in the term of *St. Hilary* in the — year, &c. one *A. B.* duly sued out of the court of our lord the king, before the king himself, (the said court then being at *Westminster* in the county of *Middlex*) a certain writ of our said lord the king of *Latitat* against the said *N.* by the name of *N. F. Gent.* and against *V. E. J. C.* and *J. C.* in the said writ also named, directed to the then *Directed to the* sheriff of the county of *Devon*; by which *sheriff of Devon.* said writ the said sheriff of the said county of *Devon* was commanded to take the said *N. F. V. E. J. C.* and *J. C.* if they should be found in his bailiwick, and to keep them safely, so that he might have their bodies before our said lord the king at *Westminster*, on *Monday* next after the morrow of the *Ascension* of our Lord then next ensuing, to answer the said *A. B.* in a plea of trespass, and also to a bill of the said *A.* against the said *N.* for 60*l.* of debt, according to the custom of the court of our said lord the king, before the king himself to be exhibited; which said writ *Writ delivered to the sheriff.* afterwards, and before the return thereof, to wit, on the ninth day of *May* in the — year, &c. the said *A. B.* at *S.* aforesaid delivered to one *Sir E. S. Bart.* then sheriff of the said county of *D.* to be executed in due form of law. By virtue of *Warrant thereupon to defendants.* which said writ, the said *Sir E. S.* then sheriff of the county aforesaid afterwards, to wit, on the — day of — in the —

year aforesaid, and before the return of the said writ, at *S.* aforesaid made his certain warrant in writing, sealed with the seal of his office, directed to the said *R. J. G. and B.* and to one *R. E.* by which said warrant the said then sheriff on the behalf of our lord the king, commanded the said *R. J. G. B. and R.* and each of them, that they should take the said *N. F.* if he should be found in his bailiwick, and that, &c. so that the said sheriff might have his body before our said lord the king at *Westminster*, on the said *Monday* next after the morrow of the *Ascension* of our Lord, to answer the said *A. B.* of the plea and bill aforesaid, which said warrant afterwards, to wit, on the said — day of — in the — year aforesaid, at *S.* aforesaid, was delivered to the said *R. J. G. and B.* to be executed according to law; by virtue of which said warrant they the said *R. J. G. and B.* afterwards, and before the return of the said writ, to wit, on the — day of — in the — year aforesaid, at *S.* aforesaid, took and arrested the said *N. F.* and then and there had him in their custody by virtue of the said warrant, and detained the said *N.* as it was lawful for them to do, by the time in the said declaration above specified, which said taking and arresting the said *N.* in form aforesaid, and for the cause aforesaid, are the same assault and imprisonment, whereof the said *N.* above complains; without this, that they the said *R. J. G. and B.* or either of them, are guilty of any assault

*By virtue  
whereof they  
arrested the  
plaintiff.*

fault and imprisonment, otherwise, or in any other manner before or after the said — day of — in the — year aforesaid; and this they are ready to verify: Wherefore they pray judgment if the said N. ought to have his action thereupon against them, &c.

3 Lev. 62, 63.

And the said T. by R. R. his attorney comes and defends the force and injury, when, &c. and says, that at the time of making the said several promises and undertakings he was within the age of twenty-one years; and this he is ready to verify: Wherefore he prays judgment, if the said W. ought to have his said action thereupon against him, &c. *Infra Etatem,*

And the said W. says, that he by any thing before alledged ought not to be barred from having his said action against the said T. because he says, that the said 20 l. expended and laid out by him the said W. for the said T. and the taylor's work done and performed by him the said W. together with the materials and necessary things used in and about the said work, and in form aforesaid found and provided by the said W. for the said T. were laid out and expended, done and performed, found and provided by the said W. at London aforesaid, in the parish and ward aforesaid, for the necessary apparel and cloathing of the body of the said T. his degree requiring the same; and this he is ready to verify: Whereupon he prays judgment, and his said damages by occasion of the premisses, to be adjudged to him, &c. *Replication, for necessary apparel suitable to defendant's degree.*

And

*Rejoinder, not  
for necessary  
apparel, &c.*

And the said *T.* says, that the said 20*l.* expended and laid out by the said *W.* and the said taylor's work done and performed by the said *W.* together with the materials and things, necessary used in and about the said work, and in form aforesaid found and provided by the said *W.* for the said *T.* were not for the necessary apparel and cloathing of the body of the said *T.* in manner and form as the said *W.* has thereupon above by replying alledged; And of this he puts himself upon the country; And the said *W.* likewise, &c.

*Durels to a  
bond.*

And the said *H. J.* by *S. A.* his attorney comes and defends the force and injury, when, &c. and saith, that the said *S. C.* ought not to have or maintain his said action against him, because he says, that he, at the time of making the writing aforesaid, was imprisoned by the said *S. C.* and others by his contrivance, to wit, at *T.* aforesaid in the county aforesaid, and was there detained in prison until he the said *H. J.* by force and durels of imprisonment then and there made the said writing to the said *S. C.* wherefore he prays judgment if the said *S. C.* ought to have or maintain his said action aforesaid, &c.

*Mich. 10 Geo. 2.*

- 1 Count. *Indeb. ass.* for serving defendant as a hired servant.
- 2 *Indeb. ass.* for work and labour.
- 3 *Quantum meruit*, for nursing defendant's daughter.
- 4 *Insimul computasset.*

And

And the said *John Carter* by *J. S. Plea of tender* his attorney comes and defends the of 3 s. 6 d. force and injury when, &c. And as to the first promise and assumption in the said declaration. mentioned, except as to 3 s. 6 d. part of the said sum of 10 l. therein mentioned; and as to all the other promises and assumptions mentioned in the said declaration, the said *John* saith, that he did not assume upon himself in manner and form as the said *Margaret* above thereof complains against him; And of this he puts himself upon the country; And as to the said 3 s. 6 d. part of the said sum of 10 l. in the said first promise and assumption in the said declaration mentioned; and as to the said first promise and assumption in that behalf, the said *John* saith, that the said *Margaret* ought not to have or recover against him any more damages by reason of the not paying thereof, than the said 3 s. 6 d. because he saith, that after the said first promise and assumption above supposed to be made, and before the suing out the original writ of the said *Margaret*, to wit, on the first day of *January* in the year of our Lord 1735. at *Westminster* aforesaid, he the said *John* was ready and offered to pay, and tendered to the said *Margaret* the said 3 s. 6 d. which the said *Margaret* then and there refused to accept from the said *John*. And the said *John* further saith, that from the time of making the said first promise and assumption hitherto he hath been always

ways ready, and still is ready, to pay the said 3 s. 6 d. to the said *Margaret*, and he brings the same here into court, ready to be paid to the said *Margaret* if she is willing to receive the same; and this he is ready to verify: Wherefore he prays judgment, if the said *Margaret* ought to have or recover against him any more damages than the said 3 s. 6 d. &c.

*W. Chapple.*

*The money to be paid into court to the prothonotary when the plea is left, which should be pleaded in 4 days.*

*Replication.*

And as to the said plea of the said *John* as to the first promise (except as to 3 s. 6 d. part of the said sum of 10 l.) and as to all the other promises mentioned in the said declaration, the said *Margaret* saith, that the said *John* did promise and undertake in such manner and form as the said *Margaret* hath above complained against him the said *John*; And of this she likewise puts herself upon the country; And as to the said 3 s. 6 d. part of the said 10 l. in the said first promise mentioned, and in bar pleaded to be tendered as above, she the said *Margaret* saith, that by reason of any thing by the said *John* above in pleading alledged she ought not to be precluded from having her said damages therefore against him the said *John*, because she saith that he the said *John* did not at  
any

any time before the suing out of the said original writ of the said *Margaret*, offer to pay or tender unto the said *Margaret* the said sum of 3*s.* 6*d.* as the said *John* hath above in his pleading alledged; And this she prays may inquired of by the country, &c. And the said *John* doth so likewise, &c. Therefore, &c.

And *Thomas Merriton*, who is impleaded *Plea of misnomer* by the name of *Thomas Moreton*, in his proper person comes and defends the force and injury, &c. and saith, That he is now, and always was called and known by the surname of *Merriton*, and not *Moreton*, as by the said writ and declaration is above supposed; and this he is ready to verify: Wherefore he prays judgment of the said writ, and that the said writ may be quashed, &c.

And *John Smith*, late of the parish of *Abatement*. *St. James* within the liberty of *Westminster* Defendant not *ster* in the county aforesaid, yeoman, a-<sup>rightly descri-</sup>gainst whom the said *Ralph Bigland* hath brought his said writ, by the name of *John Smith* late of the parish of *St. James* within the liberty of *Westminster* in the county aforesaid, cheesemonger, in his proper person comes and defends the force *Def. ought regularly to shew* and injury, &c. and saith, that on the day of suing out the said original writ, and *his mystery, not his degree, but* long before, he was, and yet is a yeoman, *being of no and not of any mystery, trade or profession; trade these words are intended to answer that objection.* without this, that the said *John Smith* on the day of suing out the said original writ, or at any time before or since, was a cheesemonger;

monger; and this he is ready to verify: Wherefore he prays judgment of the said writ, and that the said writ may be quashed.

*Plea to be delivered in writing to the plaintiff's attorney.*

The defendant is to deliver his plea in writing [on paper stamped with a double penny stamp] to the plaintiff's attorney. *Mich. 1654.*

*When to be left in the office.*

And if there be no such attorney to be found, or being found refuseth to accept it, then the plea may be left in the office. *Same Rule.*

*Rule to plead, and an order for time. Plt. need not give a new rule.*

Where a rule to plead has been given, and the defendant obtains an order for time to plead till the first day of the next term, the plaintiff may sign judgment in default of the defendant's pleading, without giving a new rule.

*The like where delayed by an injunction.*

Where the plaintiff has given a rule to plead, and has been delayed from signing judgment by an injunction out of Chancery, after the injunction is dissolved he may sign judgment without giving a new rule.

*Plea can't be delivered in the country.*

A plea delivered to the attorney in the country is irregular, it must be delivered to the agent in town or left in the office.

*Nil debet to assumpsit, Plt. may sign judgment.*

If the defendant pleads a false plea, as *Nil debet* to an action on the case upon *assumpsit*, the plaintiff may sign judgment.

*No dilatory plea to be received without affidavit.*

No dilatory plea shall be received unless the party offering the same do by affidavit prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true. *Stat. 4 & 5 Annæ.*

A plea of *infra Ætatem* ought to have *Affidavit to* an affidavit annexed to verify the truth of *plea of infancy.* the plea.

A plea in abatement must be pleaded *Plea in abate-* within the first four days after the decla- *ment to be* ration is delivered or left in the office, al- *pleaded in four* though no rule to plead be given, or else *days.* the defendant must within that time procure a special imparlance; and a plea in abatement otherwise pleaded is a mere nullity, and the plaintiff may sign judgment.

If a plea, which ought to be verified by *For want of af-* affidavit, has not an affidavit annexed, the *fidavit to plea* plaintiff may *instante*, without applying *in abatement* to the court for leave, sign judgment as *plaintiff may* tho' no plea had been delivered. *sign judgment.*

If a plea, which ought to be signed by a *And if a plea;* serjeant, be delivered without a serjeant's *which ought to* hand, the plaintiff may sign judgment as *have a serj.* if no plea had been delivered. *band, be deli-*  
*vered without.*

The following pleas do not require a *What pleas do* serjeant's hand, viz. *not require a*  
*serj. band.*

<i>Comperuit ad Diem,</i>	<i>Per Minas,</i>
<i>Son Assault,</i>	<i>Solvit ad Diem,</i>
<i>Plene Administravit,</i>	<i>Ne unques Execu-</i>
<i>Riens per Discent,</i>	<i>tor,</i>
<i>Nul tiel Record,</i>	<i>Infra Ætatem.</i>

The demand of a plea must be in wri- *Demand of a* ting. *plea to be in*

The plaintiff cannot sign judgment for *writing.* want of a plea, 'till the afternoon of the *When to sign* day after the rule to plead is out. *judgment.*

Where

*When on a judge's order for time to plead.*

Where the defendant obtains a judge's order for time to plead, the plaintiff cannot sign judgment till the afternoon of the day after the time given by the order is expired; as if by the order the defendant has till *Monday* to plead, the plaintiff can't sign judgment before *Tuesday* in the afternoon.

*No summons to be taken out after rule to plead is out.*

A summons for time to plead ought not to be taken out after the rule to plead is out; and if such summons be taken out and served, 'tis no stay of proceedings.

*After summons no judgment till summons discharged.*

If the defendant takes out a judge's summons for time to plead, the plaintiff cannot sign judgment 'till the summons is discharged.

*Plea of tender.*

A plea of tender is not an issuable plea within the meaning of a judge's order for time to plead, on pleading an issuable plea; neither can a plea of tender be pleaded after time obtained to plead.

*Stat. of limitations.*

If judgment be set aside on payment of costs, and pleading an issuable plea, the defendant cannot plead the statute of limitations; for it is not an issuable plea within the meaning of the rule, for setting aside the judgment the rule should be on pleading the general issue.

*What time the def. has to plead after oyer.*

If the defendant crave oyer he shall have as many days to plead after oyer given, as he had to plead at the time oyer was demanded.

If oyer be demanded after rule to plead is out, the plaintiff may sign judgment notwithstanding.

The defendant pleaded a release, with *Within what time the def. ought to deliver oyer of a deed pleaded by him.* a *Profert hic in curia*, on the 12th of November the plaintiff craved oyer, and on the 14th signed judgment, for want of oyer being given him; and it was held that this judgment was regularly signed, that from the 12th to the 14th was a reasonable time for the defendant to give the plaintiff oyer, and that the plaintiff had no need to apply to the court to set aside the plea, for, after oyer craved by the plaintiff, the defendant is bound to verify his plea. *Blaxland against Burgis, Mich. 7 Geo. 2.*

The defendant may waive his special plea, and plead the general issue the same term, without payment of costs or application to the court. *Def. may waive his special plea, and plead the general issue.*

*Sed. Q.* If the plaintiff has replied, whether the defendant must not apply to the court and pay costs?

After a plea of tender, and money brought into court, the court will not admit the defendant to withdraw his plea and plead the general issue. *Can't withdraw a plea of tender.*

## Of Double Pleas.

Double pleas allowed, viz. — *Non assumpsit*, and *Non assumpsit infra sex annos.* *Double pleas allowed.*

*Non assumpsit*, and a discharge under the insolvent debtors act.

In replevin, leave given to avow two matters, viz. a justification of the distress under a lease for years, and that the goods

distraigned were not the property of the plaintiff.

In trespass, *Non Cul.* and *Liberum tenementum alterius.*

*Solvit ad Diem* and a mutual debt.

Damage feasant, and under a demise from the defendant to the plaintiff.

Damage feasant, and for rent in arrear.

*Double plea denied.*

Double pleas denied, viz.— *Non assumpsit*, and a release, as contradictory.

*Non assumpsit*, *Non assumpsit infra sex annos*, and leave to bring money into court.

*Non assumpsit*, and *Plene administravit*, having no affidavit to verify the latter.

*Solvit ad Diem*, and *Riens per Discent*, the like.

Not guilty, and satisfaction made, being contradictory.

Not guilty, and accord and satisfaction, the like.

Not guilty, and a justification, the like.

*Liberum Tenementum*, and a justification, the like.

*Nil debet*, and *Nil habuit in Tenementis*, the latter may be given in evidence.

*Leave to plead double any time before judgment.*

The defendant may have leave to plead double any time before judgment signed, though the rule to plead be out, but not before appearance.

*Not after single plea.*

After the defendant has pleaded a single plea, he can't have leave to add another.

After

After the defendant has paid money in-  
to court, he can't have leave to plead  
double. Nor after mo-  
ney brought  
into court.

The defendant, with leave of the court  
pleaded *Non assumpsit*, and *Non assumpsit*  
*infra sex annos*; to the latter the plaintiff  
replied an original: Issue was joined on  
*Nul tiel Record*, and judgment for the  
plaintiff; whereupon he executed a writ  
of inquiry, but did not proceed on the  
issue of *Non assumpsit*. The defendant  
moved to set aside the writ of inquiry;  
the plaintiff insisted he might enter *Noli*  
*Prosequi* on the issue of *Non assumpsit*, and  
take his execution on the issue that was  
found for him. The defendant insisted both  
pleas went to the whole declaration; and  
if any one issue was found for the defen-  
dant, the plaintiff was barred of his de-  
mand. *Cur'*: It is a judgment only as to  
part, and not upon the whole proceeding,  
and the inquiry could not be executed be-  
fore the other issue was tried. The defendant  
has a double defence given him, and if  
any one be found for him, he shall be ex-  
cused, therefore this writ of inquiry is  
wrong; and if this way of proceeding  
was to be allowed, there is an end of plead-  
ing double. *Prior v. Com. Ilay Exec. Hil.*  
7 G. 2.

Action on a promissory note, double  
plea, viz. *Non assumpsit*, and *Non assumpsit*  
*infra sex annos*: To the latter the plaintiff  
replied on original, and on *Nul tiel Record*  
had judgment; but on trial upon the *Non*  
*assumpsit* If either found  
for the def. the  
plaintiff can't  
recover.

*assumpsit* was nonsuited. On the issue in which he had judgment he executed a writ of inquiry, which the defendant moved to have set aside, and said, that the two pleas go to the whole; and if either be found for the defendant, the plaintiff cannot recover. It was urged for the plaintiff, that by the statute for the amendment of the law, where several matters are pleaded by the defendant, if any be found for the plaintiff, he shall recover. *Cur*: This is a consideration. Adjourned. *Postea* writ of inquiry set aside. *Prior v. Com. Ilay Exec. Mich. 8 Geo. 2.*

*Def. to pay for a copy of the issue, and entering his pleadings.*

When issue is joined, the plaintiff delivers the defendant's attorney a copy thereof on double penny stamped paper, he paying for the same after the rate of 4*d.* a sheet, besides the duty; and for the entry of his plea, according to the length, if the general issue, only 2*s.* and for filing his warrant of attorney 8*d.* *v. postea* fol. 152. But note, if the issue be of the same term with the declaration, and the defendant has paid for one copy of the declaration, he is only to pay for a copy of the pleadings subsequent to the declaration, for he is not obliged to pay for two copies of the declaration in the same term.

*Where plt. appears for the def. he may charge it on the back of the issue.*

If the plaintiff enters the appearance for the defendant, he may charge for it on the back of the issue, and if the defendant's attorney will not pay it, he may sign judgment.

The

The defendant's attorney must pay for the copy of the issue at all events, or the plaintiff may sign judgment; and if it be overcharged, he may apply to the court.

*Defi's attorney must pay for the issue at all events.*

But where the defendant is a prisoner, and no attorney appears to be concerned for him, the plaintiff cannot sign judgment for not paying for the copy of the issue.

*How if def. be a prisoner, and no attorney concerned.*

The method of making up the issue in this court is the same with the method used in the court of *King's Bench*, when the proceedings are by original; and when the proceedings in this court are by bill, the issue begins with a memorandum, as in the *King's Bench* on proceedings by bill. An issue by original begins thus.

*Method of making up the issue.*

Borret.

Trinity Term (the Term the Issue is joined) in the Year of King George the Second.

Middlesex, *A. B.* late of Westminster in to wit, *A.* the county of Middlesex, Gentleman, was attached to answer *C. D.* of, &c. [to the end of the declaration] And thereupon he brings suit, and so forth.

Then begin a new line, and enter the pleadings to the end of the issue, after which follows the award of the *Venire* in this form, — It is therefore commanded *Venire facias* to the sheriff, that he cause to come here from the day of, &c. (some return before the day of trial) Twelve, &c. By whom, &c.

*awarded.*

And who neither, &c. To recognize, &c.  
Because as well, &c.

Thomson.

*Trinity Term in the Sixteenth  
Year of the Reign of King  
George the Second.*

*Entry of an  
issue on a  
bill against  
an attorney,  
where the is-  
sue is joined in  
a term subse-  
quent to that  
in which the  
bill was filed.*

**H**eretofore as it appears in the term  
of *Easter* last past in the 864. roll  
it is thus contained. *Middlesex, to wit,* Be  
it remembered, that on the 25th day of *May*  
in this same term *R. L.* came here into  
court by *L. R.* his attorney, and exhibited  
to the justices of our lord the king of the  
bench here his bill against *M. U. Gent.*  
one of the attornies of the court of  
our said lord the king of the bench here  
present, here in court in his proper per-  
son in a plea of trespass on the case, the  
tenor of which said bill follows in these  
words, *to wit,* To the justices of our lord  
the king of the bench. *Middlesex, to wit,*  
*R. L.* by *L. R.* his attorney complains a-  
gainst *M. U. Gent.* one of, [*set forth the  
whole bill verbatim, to*] And thereupon he  
prays relief, &c. Pledges of prosecuting  
*John Doe* and *Richard Roe*.

*Impar lance.*

And the said *M.* in his proper person  
comes and defends the force and injury,  
when, &c. and prays leave to imparl there-  
upon here, until *Friday* next after the  
morrow of the Holy *Trinity*; and has, &c.  
The same day is given to the said *R.* here,  
&c.

*Ec.* And now here at this day comes as well the said *R.* by his attorney afore said, as the said *M.* in his proper person. And upon this the said *R.* prays, that the said *M.* may answer to his said bill, *Ec.* And the said *M.* as before defends the force and injury, *Ec.* And says, that he did not undertake and promise in manner and form as the said *R.* above declares against him; And of this he puts himself upon the country, *Ec.* And the said *R.* does so likewise, *Ec.* Therefore the sheriff is commanded that he cause to come here on *next after* Twelve, *Ec.* By whom, *Ec.* And who neither, *Ec.* To recognize, *Ec.* Because as well, *Ec.*

See more of this among the pleadings at the end of the book.

In country causes the issue must be delivered to the agent in town, and not to the attorney in the country; and where it has been agreed between the country attornies, that the issue should be delivered in the country, and has been afterwards tendered to the agent in town, and not paid for, judgment has been signed, and held regular. But where the defendant has pleaded by his country attorney, the issue may be tendered to the country attorney, and if not paid for by him, judgment may be signed.

*In country causes issue to be delivered to the agent in town, and not to the country attorney.*

*Except.*



*Attorney to enter his warrant on record.*

*When to be filed.*

*Def't.'s attorney, on receiving the issue, to pay the plt.'s attorney the fee for filing his warrant, otherwise judgment.*

*Plt.'s attorney to file his warrant the term he declares, and the def't.'s attorney the term he appears.*

Every attorney shall enter his warrant of attorney in every suit upon record in court, on pain of 10*l.* and further punishment by imprisonment, at the discretion of the court. *Stat. 32 H. 8. c. 30. §. 2.* made perpetual 2 & 3 *E. 6. c. 32.* and *vide Stat. 18 Eliz. c. 14. §. 3.*

Warrants of attorney are to be filed of the term wherein any exigent is awarded, demurrer or issue joined, or judgment entered, which shall first happen, and to be filed upon or before the effoin-day of every *Trinity-Term*, and within one and twenty days after the end of every other term. *Hil. 14, 15 Car. 2.*

Every plaintiff's attorney who shall prosecute any cause to issue, shall, upon the delivery of the copy of such issue, receive of the defendant's attorney the fee for filing his warrant therein; and in case the defendant's attorney shall refuse to pay for the same, the plaintiff's attorney may sign his judgment in like case, as if the defendant's attorney had refused to pay for the copy of the issue, or the entry of his plea; and the plaintiff's attorney shall file as well the defendant's as the plaintiff's warrant of attorney. *Hil. 2, 3 Jac. 2.*

The plaintiff's attorney in any action or suit shall file his warrant of attorney with the proper officer the same term he declares, and the attorney for the defendant shall file his warrant of attorney, as aforesaid, the same term he appears, under the penalties inflicted upon attorneys by

by any former law, for default of filing their warrants of attorney. *Stat. 4, 5 Annæ.*

Great inconveniencies having happened by attornies neglecting to file their warrants of attorney, by which judgments have been reversed, and plaintiffs lost their debts; it was ordered therefore that no judgments whatsoever (except final judgments upon *posseas*, writs of inquiry, and *Non pros'*) shall be signed by any of the prothonotaries, unless the stamp of the clerk of the warrants be impressed on the paper, whereon such judgment is to be signed, whereby it may appear the warrants of attorney are duly filed. *Mich.*

*No judgment (except, &c.) to be signed before the judgment paper be stamped by the clerk of the warrants.*

*5 Geo. 2.* The plaintiff's attorney, on delivering a copy of the declaration to the defendant's attorney, charges *8 d.* for filing the defendant's warrant of attorney, and which he generally files at the same time he files the plaintiff's warrant, and on the same piece of parchment.

These warrants are to be wrote on parchment in the following form:

*Hilary Term in the Twelfth Year  
of the Reign of George the Second.*

Middlesex, *E. F.* puts in his place *R. C.* Plaintiff's  
*E.* his attorney against *A. B.* warrant of  
late of, *Esq.* yeoman, in a plea of trespass attorney.  
on the case [or otherwise, as the action is.]

Middle-

Defendant's  
warrant of  
attorney.

Middlesex, *A. B.* late of, *Esq.* yeoman,  
*A.* puts in his place *N. F.* his  
attorney, against *E. F.* in the plea afore-  
said.

If the defendant be described in the  
pleadings with an *Alias dict.* or the plain-  
tiff or defendant be an executor or admi-  
nistrator, he must be named in the warrant  
of attorney in the same manner exactly  
as in the pleadings.

The nature of the action must be ex-  
pressed in the warrant, according as the  
case shall be; as thus: In a plea of debt.  
In a plea of trespass. In a plea of trespass  
on the case. In a plea of trespass and  
ejectment of farm. In a plea of trespass  
and assault. In a plea of trespass, assault  
and imprisonment.

On the back of the issue you give no-  
tice of trial, thus:

Mr. *T. V.*

Notice of trial.

Take notice of trial in this cause for  
the sittings after this present *Michael-*  
*mas-Term*, at *Guildhall, London*.

Your humble servant,

10 Nov. 1740

*L. R.* Attorney for the  
plaintiff.

Eight days in  
London or  
Middlesex.

If the trial is to be in *London* or *Mid-*  
*dlesex*, (and the defendant dwells within  
forty miles of *London*) there must be eight  
days notice thereof given exclusive of the  
day whereon the notice is given. *Mich.*  
1654.

If

*in the Court of Common Pleas.*

1551

If the defendant lives above forty miles from *London*, there must be fourteen days notice of such trial to be had in *London* or *Middlesex*, exclusive of the day of the notice. *Same Rule.* *When 14 days in London or Middlesex.*

Of trials in the country there must be eight days notice given exclusive of the day of notice. *Same Rule.* But alter'd as follows. *Eight days in the country.*

No cause whatsoever shall be tried at *Nisi Prius* before any judge or justice of assize or *Nisi Prius*, or at the sittings in *London* or *Westminster*, where the defendant resides above forty miles from the said city respectively, unless notice of trial in writing has been given at least ten days before such intended trial. *Stat. 14 Geo. 2. c. 17. §. 4.* *When ten days notice of trial.*

And in case any person shall have given such notice of trial as aforesaid, and shall not afterwards duly countermand the same in writing at least six days before such intended trial, such party shall be obliged to pay unto the party to whom such notice of trial shall have been given as aforesaid, the like costs and charges as if such notice of trial had not been countermanded. *Same Stat. §. 5.* *And six days notice of countermand.*

In all cases where there have been no proceedings for four terms, exclusive of the term in which the last proceeding was had, the party who desires to proceed again, shall give a term's notice to the other of such proceeding; such notice shall be given before the effoin-day of the fifth or other subsequent term; a judge's *A term's notice where no proceeding for four terms exclusive, To be given before the effoin-day of the term.*

judge's summons, if no order be made thereupon, shall not be deemed a proceeding; but a notice of trial, though afterwards countermanded, shall be deemed a proceeding within this rule. *Pasch. 13 Geo. 2.*

Heretofore where the plaintiff in pleading concluded *ad patriam* (to the country) he could not give notice of trial till the defendant had joined issue, which he was not obliged to do till a four-day rule for that purpose was expired. But now in all cases where the plaintiff concludes *ad patriam*, the defendant's attorney must accept notice of trial on the back of such pleadings, whether the same be delivered to the defendant's attorney or agent, or left in the office; and such notice shall be as effectual as if issue had been joined. *Trin. 2 Geo. 1.*

Where the plaintiff concludes at *patriam*, and gives notice of trial on the back of the pleadings (pursuant to last rule) if the defendant does not join issue before the rule is out, then after judgment obtained the defendant's attorney shall be obliged to accept of notice of executing a writ of inquiry from the time that the notice of trial was given on the back of the pleadings. *Hil. 6 Geo. 1.*

Notice of trial, or of executing a writ of inquiry given to a defendant when his attorney is known, is not good notice; but when his attorney is not known, then the

*Where the plt. concludes ad patriam, the def. to accept notice of trial on the back of the pleading.*

*And if don't join in issue, to accept of notice of inquiry from the time of the notice of trial.*

*Notice of trial not to be given to the def. if his attorney be known.*

the notice may be given to the defendant.

In a country cause, notice of trial must be given to the agent in town, and not to the attorney in the country; but a countermand of notice of trial may be given in the country.

*In a country cause, notice of trial to be given in town; aliter of countermand.*

Where the plaintiff may give a short notice of trial, as where the defendant has had time given him to plead on taking short notice of trial, the plaintiff must give him as much notice as he can.

*Where the plt. may give short notice, he must give as much as he can.*

If the plaintiff ought to give 14 days notice of trial, if he was to proceed to trial, and the defendant intends to have the cause tried by proviso, he must give the same notice of trial as the plaintiff should have done.

*For trial by proviso def. must give the same notice as plt. should have done.*

The next thing to be done is to enter the issue, and prepare the *Nisi Prius* record for trial, which must be ingrossed on a piece of parchment stamped with a double half crown stamp, which you must do in this this manner.

*Of making up the Nisi Prius record.*

Borret.

Borret.

*Pleas at Westminster before Sir John Willes, Knight, and his Companions, Justices of our Lord the King of the Bench, of Easter Term in the Twelfth Year of the Reign of our Sovereign George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c.*

Roll .

Middlesex, *C. L.* late of, &c. Gentleman, to wit, *C.* was attached to answer *R. R.* of a plea of trespass, on the case; and whereupon the said *R. R.* by *J. S.* his attorney complains, That whereas, &c. (to the end of the issue and award of the Venire.)

*Note;* In the Common Pleas the *Placita* is wrote but once, except on the death or change of a chief justice, or on an old record, in which case you write a second *Placita*, then you write the *Jurata* in this manner.

Middlesex, *THE* jury between *R. R.* to wit, *T* plaintiff, and *C. L.* late of, &c. Gentleman, in a plea of \*trespass on

---

\* In replevin, taking and unjustly detaining the cattle of the said *R.*

the case, are respited here until on the morrow of the Holy Trinity (the return of the *Habeas Corpora Juratorum*, and which should be the next return after the day of trial) unless Sir John Willes, Knight, the king's chief justice of the bench, here assigned by form of the statute in that case made and provided, shall come before, on Tuesday, the                      day of [the day of the sittings] at Westminster, in the great hall of pleas, there, commonly called Westminster Hall, in the said county of Middlesex (if in London, say, at the Guildhall of the city of London aforesaid) for default of the jurors, because none came: Therefore let the sheriff have the bodies of the several persons mentioned in the panel annexed to the writ of *Habeas Corpora Juratorum*. And be it known that the justices here in court in this same term delivered a writ thereupon to the deputy of the sheriff of the county aforesaid, to be executed in form of law, &c.

If the trial is to be had at the assizes, the form of the *Jurata* is as follows.

Lincoln, **T**HE jury between R. R. plain- *For the assizes.*  
to wit, tiff, and C. L. late of, &c.  
Gentleman, in a plea of trespass on the case, is respited here until on the morrow of the Holy Trinity, unless our lord the king's justices, assigned to take the assizes in the county aforesaid by form of the statute in that case made and provided, shall come before on (the day the assizes are  
to

to be held) at (the place where they are to be held) in the county aforesaid, for default of the jurors, because none came: Therefore, &c. (as before.)

When the *Nisi prius* record is prepared, you are to carry it, and the roll whereon you have entered the issue, to the proper prothonotary, who on being paid for the entry will mark both the record and roll; then you go to the clerk of the treasury, who will examine and see that the *Jurata* is rightly entered, and sign and seal the record.

No record of  
Ni. Pri. to be  
signed before  
issue entered.

No record of *Nisi prius* is to be signed before the issue be entered upon the roll. Mich. 1654. Pas. 5 W. & M.

Issues to be entered the same term they are joined.

And all issues are to be entered of the term they are joined. Pas. 5 W. & M. Hil. 11 Geo. 1.

In what manner records of *Nisi prius* are to be ingrossed.

Every record of *Nisi prius* is to be ingrossed in a fair legible character, and so entered on the roll, the beginning of every pleading to be with a new line, and the first word in a greater character than the rest; and in all actions that have diverse narrs, [i. e. counts] notice thereof must be given by figures in the margin of such record of *Nisi prius*; and all records of *Nisi prius* that shall be ingrossed in this court are to be of the exact breadth of the rolls of the court, and not broader or lesser. Trin. 29 Car. 2.

Within what time they must be made up for the affizes.

Records of *Nisi prius* for trials at the affizes shall be signed by the respective prothonotaries, and signed and sealed by the

the clerk of the treasury within the space of three weeks next after the end of every Hilary term, and of every Trinity term, and not afterwards unless by special order. Trin. 29 Car. 2.

The clerk of the treasury shall not sign or seal any record of *Nisi prius*, unless the same shall be first signed or stamped by the clerk of the warrants. Hil. 2, 3 Jac. 2. *No record of Nisi prius to be sealed, unless signed by the clerk of the warrants.*

*The Form of a Venire Facias.*

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the sheriff of Essex, greeting. We command you, that you cause to come before our justices at Westminster, on the morrow of the Purification of the Blessed Mary, twelve free and lawful men of the body of your county, each of whom has ten pounds of lands, tenements or rents by the year at least, by whom the truth of the matter may be better known, and who are in no ways of kin, either to R. K. the plaintiff, or to J. W. late of, &c. or to W. S. late of, &c. [if the defendant be declared against with an Alias dict', or as an executor or an administrator, he must be here described as in the pleadings] to make a certain jury of the county between the parties aforesaid, in a plea of taking and unjustly detaining cattle [as the action is] because as well the said J. W. and W. S. (the party who first takes the issue) as the

Vol. I. M said

said R. S. between whom the matter in variance is, have put themselves upon that jury; and have there the names of the jurors and this writ. Witness Sir John Willes, Knight, at *Westminster*, the 23d day of *January* in the fifteenth year of our reign.

Thomson.

s. d.

Duty — — — 1 6

Signing — — — 1 4

Sealing — — — 0 7

Insert the cause of action in the *Venire* as the case shall be, thus:

*Debt.*

In a plea of debt.

*Case.*

In a plea of trespass on the case.

*Affault.*

In a plea of trespass and assault.

*Affault and imprisonment.*

In a plea of trespass, assault and imprisonment.

*Ejectment.*

In a plea of trespass and ejectment of farm.

*Covenant.*

In a plea of breach of covenant.

*Replevin.*

In a plea of taking and unjustly detaining cattle.

*Detinue.*

In a plea of detaining goods, or writings.

If the defendant carries down the cause to be tried by proviso, the writ runs thus:

*By proviso.*

And have there the names of the jurors and this writ; provided always, that if two writs shall thereupon come to you, that you only return one of them to our said justices at *Westminster*, at the time aforesaid.

You

You carry this writ to the prothonotary to be signed, for which you pay him 1 s. 4 d. and then to the seal office to be sealed, for which you pay 7 d.

When you have this writ returned by the sheriff, you carry it to the clerk of the jury (the present clerk executes this office at the petty-bag office in the *Rolls yard Chancery Lane*) and he will make out a writ of *Habeas Corpora Juratorum*, which you carry to the sheriff, and he also returns.

*The Form of the Habeas Corpora Juratorum.*

GEORGE the Second, by the Grace of <sup>Habeas Cor</sup> God, of *Great Britain, France and Ire-* <sup>pora.</sup> land King, Defender of the Faith, &c. to the sheriff of *E.* greeting. We command you, that you have before our justices at *Westminster*, from the day of *Easter* in 15 days [*the day in bank the next return after the trial*] or before our justices assigned to take the assizes in your county, by force of the statute in that case provided, if they shall come before, on the day of [*the day the assizes are held*] at [*the place where*] in your county, the bodies of the several persons named in the panel annexed to this writ, jurors summoned in our court before our justices at *Westminster*, between *R. K.* plaintiff, and *J. W.* late of, &c. and

M 2                      W. S.

W. S. late of, &c. of a plea of taking and unjustly detaining cattle, [as the action is] to make that jury; And have there this writ. Witness Sir John Willes, Knight, at Westminster, the day of in the year of our reign.

				<i>Bulstrode:</i>
			s. d.	
Duty	—	—	1	6
Filing Venire	—	—	0	4
Hab. Cor.	—	—	1	8
Sealing	—	—	0	7

4 1

### The Form of the Subpoena ad Testificandum.

Subpoena ad Testificandum.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To A. B. C. D. E. F. and G. H. greeting. We command, and firmly injoin you and each of you, that laying all other matters aside, and notwithstanding any excuse, you be in your proper persons before our justices at the assizes to be held, at [the place where the assizes are to be held] in the county of S. on [the day when] next ensuing, to testify and speak the truth in a certain matter of controversy pending undetermined in our court before our justices at Westminster, between A. B. plaintiff, and C. D. late of E. in the said county of S. Gentleman, defen-

defendant, in a plea of trespass; [*as the action is*] And this you are not to omit, nor is any one of you to omit, under the penalty on each of you of one hundred pounds. Witness Sir *John Willes*, Knight, at *Westminster*, the                      day of                      in the                      year of our reign.

*Borret.*

			s.	d.
Duty	—	—	1	6
Signing	—	—	1	0
Sealing	—	—	0	7
			—	—
			3	1
			—	—

If the trial be to be had in *London*, you say thus, — That, &c. you be before Sir *John Willes*, Knight, our chief justice of the bench, at *Guildhall, London*, on [*the day of the sittings*] to testify, &c.

If in *Middlesex* thus, before Sir *John Willes*, Knight, our chief justice of the bench at *Westminster*, in the great hall of pleas there, called *Westminster Hall*, to testify, &c.

This *Subpœna* you carry to the proper prothonotary to be signed, for which you pay 1 s. and to the seal-office to be sealed, for which you pay 7 d. and then you make out tickets for each of the witnesses in the following form.

M 3

Mr.

Subpœna  
ticket.

Mr. R. B.

By virtue of a writ of *Subpœna* to you directed, and herewith shewn unto you, You are commanded personally to be and appear before his majesty's justices of assize [or the chief justice as before directed, according as the case is] at [the place] on the \_\_\_\_\_ day of \_\_\_\_\_

by \_\_\_\_\_ of the clock in the noon of the same day, to testify the truth, according to your knowledge, in a certain cause now depending, and there to be tried between *A. B.* plaintiff, and *C. D.* late of \_\_\_\_\_ in the county of \_\_\_\_\_

Gentleman, defendant, in a plea of trespass [as the action is] on the part of the plaintiff [or defendant, if at his instance *subpœna'd*] And hereof you are not to fail, upon pain of one hundred pounds. Dated the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_ in the year of our Lord 174 , and in the \_\_\_\_\_ year of the reign of our sovereign lord George the Second, King of Great Britain, &c.

L. R. Attorney.

Cause to be entered with the marshal.

Formerly four days before the day of trial.

Now two.

Before you go to trial you must enter your cause with the judge's marshal.

Causes to be tried in London or Middlesex ought to be entered in the marshal's book four days before the day of trial. Mich. 1654.

But notwithstanding this rule, and tho' there is none other to the contrary, two days

days at this time are reckoned sufficient.

*Ne Recipiatur* shall be allowed to be entered for the sittings at *Nisi prius* after every term, unless the records of *Nisi prius* and the writs be made up and brought into court on or before the days and sittings respectively. *Hil. 8 Geo. 1.*

*Records to be brought in before the sittings after term.*

In every cause to be tried in the circuits, the writ and record shall be entered together, and no record shall be received without the writ. *Trin. 10 & 11 Geo. 2.*

*On circuit writ and record to be entered together.*

No writ and record of *Nisi prius* shall be received at the assizes in any county in *England*, unless they shall be delivered to, and entered with the marshal, before the first sitting of the court after the commission-day, except in the counties of *York* and *Norfolk*; and there the writs and records shall be delivered to, and entered with the marshal before the first sitting of the court, on the second day after the commission-day, otherwise they shall not be received. *Hil. 14 Geo. 2.*

*On circuit in what time record to be brought and entered.*

Every cause shall be tried in the order in which it is so entered, without any preference or delay, unless it shall be made out to the satisfaction of the judge in open court, that it is impracticable or inconvenient so to do, who thereupon may make such order for the trial of the cause, so put off, as to him shall seem just. *Same Rule.*

*Causes to be tried in the order entered.*

A list of the causes, when so entered as aforesaid, shall be made by the marshal,

*List of causes to be made and hung up.*

and forthwith fixed up in some public place in the *Nisi prius* court, there to remain during the whole time of the assizes.

*Same Rule.*

*Entering fee in London or Middlesex.*

If the cause be to be tried in *London* or *Middlesex*, you pay, for entering the cause with the marshal, 13 s. 9 d. viz. the chief justice 10 s. 9 d. Marshal 2 s. Associate 1 s.

*At the assizes.*

If the trial be at the assizes, the fee for entering the cause is but 11 s. 8 d. viz. the judge 6 s. 8 d. Clerk of assize 2 s. Marshal 2 s. Cryer 1 s.

*If Plt. don't go to trial at assizes, must give new notice.*

If the plaintiff gives notice of trial for the assizes, and don't bring the trial on, he can't go down to trial again without new notice, unless by consent or rule of court.

*In London or Middlesex may give new notice, before the day of sitting, for the next sitting.*

But in *London* or *Middlesex*, if the plaintiff gives notice of trial for one sitting, and be not provided to proceed, he may give notice before that sitting, that he will try it at the next sitting. *Mich. 1654.*

*Plt. can continue his notice but once.*

The plaintiff cannot continue his notice of trial a second time, *i. e.* he can give short notice of trial but once; but if the full time be given by the notice of continuance the word *continue* will not vitiate the notice.

*Can't countermand and continue in the same notice.*

The plaintiff gave notice of trial for the first sitting within term, then gave notice that he countermanded the notice of trial for the first sitting, and continued it for the second; the defendant made no defence

defence at the trial, and the plaintiff had a verdict. But on a motion the court said the plaintiff could not countermand and continue in the same notice, and set the verdict aside. *Smith v. Hough, Hil. 11 Geo. 2.*

In case the plaintiff gives notice of trial, and don't go to trial accordingly, the defendant upon motion shall have his costs of attendance, to be taxed by the prothonotary, unless the plaintiff countermand his notice in convenient time, or shew cause to be allowed by the court in excuse of such costs. *Mich. 1654.*

The defendant gave notice of trial by proviso, and the plaintiff also gave notice of trial; neither went on to trial, or countermanded, and both got rules for costs for not going on to trial; the prothonotary doubted whether both were intitled to costs; and the judges were of opinion, that as both sides gave notice of trial, and neither proceeded to trial, each side was intitled to costs. *Reading v. Grafton, M. 13 Geo. 1.*

No countermand of trial at the assizes shall be good unless notice be given two days before the commission-day. *Mich. 5 Geo. 1.*

And in *London or Middlesex* the countermand must be two days before the sitting for which notice was given. *Antea, fol. 155.*

Notice of trial may be countermanded after the record is made a *Remanet*.

Where issue is or shall be joined, and the plaintiff hath neglected or shall neglect to bring such issue on to be tried, according

*If plt. don't proceed to trial according to notice, nor countermand, he shall pay costs.*

*Both plt. and def. giving notice of trial, and neither proceeding to trial, each paid costs.*

*Countermand at the assizes.*

*In London and Middlesex.*

*Countermand after record made a Remanet.*

*When on default of the plaintiff going to trial the court shall give judgment of nonsuit.*

cording to the course and practice of the court, it shall be lawful for the judges at any time after such neglect, upon motion made in open court (due notice having been given thereof) to give the like judgment for the defendant as in cases of nonsuit, unless the judges shall upon just cause and reasonable terms allow any further time or times for the trial of such issue. And if the plaintiff shall neglect to try such issue within the time or times so allowed; then and in every such case the judges shall proceed to give such judgment as aforesaid. *Stat. 14 Geo. 2. c. 17. s. 1.*

*For trial at sittings after term, no Ne Recipiatur till after proclamation.*

You cannot, on notice of trial for the sittings after term, enter a *Ne Recipiatur* till after proclamation made for bringing the records in.

*Motion to put off a trial when.*

Motion to put off a trial must be made at least two days before the day for which the notice of trial was given.

*Motion to put off trial for want of a witness must be on the affidavit of the deft. only.*

Motion to put off a trial, for that a material witness is out of the way, and cannot be had at the trial, must be on the affidavit of the defendant; for none but the defendant can swear that the witness is a material witness.

*Not to be granted if the witness was in the way when notice of trial given.*

But if it appears that this witness, who is sworn to be a material witness, went out of town or abroad beyond sea after the notice of trial was given, the court will not put off the trial for it; the defendant might have subpoena'd him in time.

The plaintiff moved for a special jury, and at the trial there was a verdict for the

the plaintiff; this verdict was afterwards set aside on payment of costs, and the question was, whether the defendant should pay the plaintiff the charge of the special jury? The court held, That the charge of striking the special jury must be paid by the plaintiff, who moved for it, but that all the other expences of the special jury, as far as reasonable, must be allowed.

*Expences of striking a special jury to be paid by the party who moves for it; the other charges to attend the event of the suit.*

*Eyles, Bart. v. Smart, Hil. 10 Geo. 2.*

The defendant moved for a special jury, and had a verdict. *Cur'*: He ought to be allowed the costs of the special jury, except the striking. *Gynes, qui tam, v. Stephens, Pas. 10 Geo. 2.*

On trials at bar, which are to be moved for, the plaintiff's attorney must before the effoin-day of the term, in which the cause is appointed to be tried, give notice to the chief prothonotary or his secondary, of the day on which such cause is to be tried, that the same may be put down in the court-book; and in case of neglect, and without motion and special direction of the court, such cause shall not be tried that term. *Hil. 9 Ann.*

*On trials at bar, pl't's attorney to give notice of the day to chief prothonotary.*

On trials at bar, the lord chief justice and the other judges are to have copies of the issues in such causes delivered to them four days before the time appointed for trial. *Mich. 3 Geo. 2.*

*On trials at bar, judges to have copies of the issues 4 days before trial.*

Every clerk of assize, and the associate to the lord chief justice, shall make returns of *Postea's* upon records issuing out of this court, whereupon any proceedings have

*Clerks of assize and associate to return Postea's.*

have been by virtue of any writ of *Nisi Prius*, *Distingas*, or *Habeas Corpora Juratorum*, and cause the same to be delivered to the respective prothonotaries, upon the *Quarto die post* of the return of the writ of *Nisi prius* in bank, under the penalty of 20*l*. And that all excuses may be taken away, the respective clerks of assize and associate at the trial shall take the fees due to them respectively for the return of every such *postea*. *Pasch. 2 Jac. 2.*

After the trial is over, and the record is returned with the *postea* ingrossed, you get the *postea* stamped with a double half-crown stamp, and apply to the prothonotary to tax your costs, and then deliver the record and *postea* to the clerk of the judgments, who continues the same on the roll, and awards judgment.

*Postea to be left with clerk of the judgments.*

Where final judgment shall be signed upon a *postea*, the *postea* shall immediately be left with the clerk of the judgments of the prothonotary, and shall not afterwards be taken out of the office without leave of the court. *Trin. 13 Geo. 2.*

*Of special verdicts.*

In case a special verdict be found, the plaintiff's attorney must enter the proceedings to the end of the special verdict on record, and deliver it to the secondary in court, and get a serjeant to move for a *Concilium*, or day for argument, then draw up the rule, and serve it on the defendant's attorney.

In

In causes entered in the court-book for argument at the bar on special verdicts or demurrers, the attornies concerned in the cause shall deliver true copies of the record to the respective justices of the court, by the space of one week at least next before the day appointed for such argument; namely, the attorney for the plaintiff, one copy thereof to the lord chief justice, and another to the senior judge; and the attorney for the defendant like copies to each of the other two justices. *Pas. 27 Car. 2.*

No arguments by counsel on either side shall be heard at the bar, until books be delivered to all the judges. *Same rule.*

In case the attorney of either party shall not deliver books as he ought; then if the attorney on the other side, for expediting his client's cause, will deliver books to all the judges three days at the least before the argument, counsel shall be heard on his client's behalf, at the day appointed, and the attorney delivering books as aforesaid shall be reimbursed the charges of delivering the two books, which ought to have been delivered by the attorney of the adverse party, which charges the said attorney shall be bound to pay upon the demand thereof. *Same rule.*

If the charges of delivering the said two books shall not be paid before judgment, shall be given in the cause, the charges of delivering the said books shall be allowed upon taxing costs, and in that case the attorney shall not be compelled to pay the

*Paper-books on special verdicts or demurrers how to be delivered.*

*No argument till books delivered.*

*If either neglect, the other side may deliver all the books.*

*And be reimbursed by the attorney making default.*

*If not paid before judgment, to be allowed in costs.*

the said costs; but if no costs are to be taxed in the case, then the attorney making default in delivering of the books as afore said, shall be compelled to pay the charges of the copies so delivered by the attorney of the adverse party, by attachment or otherwise, as the court shall think fit. *Same rule, vide postea 183.*

*If no costs, attachment against attorney making default.*

*Motion in arrest of judgment, when.*

A motion in arrest of judgment must be made within the first four days, *i. e.* before, or on the appearance day of the return of the *Habeas Corpora Juratorum*.

*Notice, if on the last day of term.*

If the motion be on the last day of term, the party, who moves in arrest of judgment, must produce an affidavit, that he has given notice of his motion to the other side.

*Not after motion to set aside verdict; unless, &c.*

After a motion in arrest of judgment the party can't move to set aside the verdict, unless it be upon a matter disclosed after the motion in arrest of judgment, and the motion to set aside the verdict be made before judgment pronounced.

*Verdict set aside for excessive damages.*

Verdicts have been frequently set aside for excessive damages, but never for smallness of damages.

*Motion for new trial, when.*

A motion for a new trial can't be made after the appearance-day of the return of the *Habeas Corpora Juratorum*, unless the foundation of the motion be some matter discovered afterwards.

*Seldom, when issue lay on deft.*

Where the issue lay on the defendant, as *Solvit ad diem*, *Son assault*, &c. and the defendant's witnesses have been examined, the court seldom grants a new trial.

In ejectment, where a verdict is for the defendant, it is not usual to grant a new trial, because the plaintiff may bring a new ejectment, and no other disadvantage happens to him; but where the verdict is for the plaintiff, a new trial is often granted; for then the consequence of not granting a new trial is the alteration of the possession of the premisses.

When final judgment is obtained, the party is to proceed to execution; of which see hereafter.

As we spoke of issues triable by juries, we shall say something of issues triable by the judges, or by record, as on demurrers, and pleas of *Nul tiel record*.

### Of Demurrers.

AND the said *W.* by *A. R.* his attorney comes and defends the force and injury, when, &c. and says, that the said declaration in form aforesaid made and declared, and the matter therein contained, are not sufficient in the law for the said *S.* to have or maintain his said action against him the said *W.* and that he the said *W.* has no need, nor is he obliged by the law of the land to answer the said declaration in manner and form aforesaid made and declared: And this he is ready to verify: Wherefore for want of a sufficient declaration in this behalf, the said *W.* prays judgment, and that the said *S.* may be barred

barred from having his said action against him the said *W.* &c.

*Feinder.*

And the said *S.* inasmuch as he has above declared sufficient matter in the law to have and maintain his said action against the said *W.* which he is ready to verify; which said matter the said *W.* has not denied, or given any answer thereto, but intirely refuses to admit the verifying the same; the said *S.* prays judgment, and his damages by occasion of the premisses to be adjudged to him, &c.

*Concilium.*

And because the justices here will advise themselves of and upon the premisses before they give their judgment thereon, day is given to the said parties here from the day of *St. Michael* in three weeks to hear their judgment, for that the said justices here are not yet advised thereof, &c.

3 *Lev.* 130.

*Special demurrer to a writ and declaration, at the suit of any attorney.*

*Oyer of the writ.*

And the said *R. D.* by *T. C.* his attorney comes and defends the force and injury, when, &c. and craves oyer of the said writ of our lord the king of privilege; and it is read to him in these words, *to wit,* *George the Second, &c.* [setting forth the whole writ *in hac verba*] Witness Sir *Robert Eyre*, Knight, at *Westminster*, the third day of *July*, &c. which being read and heard, the said *W.* prays judgment of the said writ and declaration aforesaid of him the said *W.* because he says, that the said writ, and the declaration thereupon aforesaid, in manner and form aforesaid made and declared, and the matter in them contained, are not sufficient

in the law for the said *W.* to have and maintain his action aforesaid against him the said *R.* to which said writ and declaration in manner and form aforesaid made and declared he hath no need, nor is he by the law of the land held or obliged, in any manner to answer: And this he is ready to verify; Wherefore, and for want of a sufficient writ and declaration in this behalf, the said *R.* prays judgment, and that the said *W.* from his action aforesaid may be debarred, &c. and for causes of demurrer in law in this behalf he the said *R.* according to the form of the statute in such like cases made and provided, shews to the court these following; that is to say, for this, that it appears to this court, that the same writ of our said lord the king of privilege was had and sued out upon the third day of *July* in the eighth year of the reign of our said lord the king, which day of suing out thereof was before the day on which the said *W.* has in his said declaration thereupon alledged and declared, that the said trespasses, assaults, batteries, woundings and imprisonments, charged upon him the said *R.* in and by the said declaration, were done and committed; and also for this, that between the writ and declaration are diverse variances; and also for this, that the said declaration in form aforesaid made and declared is in itself repugnant, insensible, contradictory, and wanteth form, and so forth; And hereupon the said *R. D.* demands the

*Writ tested before the cause of action.*

*Variant, &c.*

*Day for plt. to join in demurrer.*

Vol. I. N aforesaid

aforesaid *W. O.* to join in demurrer with him the said *R.* And hereupon a day is given by the court of our said lord the king of the bench here, to the said *W.* before his majesty's justices at *Westminster*, until next after

*Plaintiff makes default.*

*Judgment against the plt.*

to join in the demurrer in law with the said *R.* And the said *W.* at the same day being solemnly required came not, neither is his writ of our said lord the king of privilege aforesaid against the said *R.* further prosecuted, but he made default: Therefore it is considered, that the said *W.* take nothing by his said writ, but that he and his pledges to prosecute, to wit, *J. D.* and *R. R.* be thereof in mercy, &c. and that the said *R.* do go thereof without day, &c. And further it is considered by the court here, that the said *R.* recover against the said *W.* 3 *l.* 16 *s.* 8 *d.* for his expences and costs by him about his defence in this part sustained, to the said *R.* by the court here, according to the form of the statute in such case lately made and provided, adjudged, &c. and that the said *R.* have his execution for the same, &c.

*General demurrer to a plea.*

And the said *C.* says, the aforesaid plea of the said *F.* above pleaded in bar, is not sufficient in law to bar him the said *C.* from his said action against the said *F.* and that he the said *C.* has no need, nor is bound by the law of the land, to answer to the said plea in manner and form aforesaid pleaded; And this he is ready to verify: Wherefore for default of a sufficient plea in

in this behalf the said C. prays his said debt, together with his damages by occasion of detaining that debt, to be adjudged to him, &c.

And the said F. for that he has above *joinder.* alledged sufficient matter in law to bar the said C. from having his said action against him the said F. which he is ready to verify, which said matter the said C. has not denied, nor any ways answered thereunto, but wholly refuses to admit the verification thereof, prays judgment, and that the said C. may be barred from having his said action, &c. And because the justices, &c.

And the said J. S. and M. by C. B. their *Demurrer to* attorney, come and defend the force and *declaration for* injury, when, &c. and pray judgment of *not alledging* the said declaration: Because they say, *that administration was* that the said declaration and the matter *granted to def.* therein contained are not sufficient in law to maintain the action of the said D. against them the said J. S. and M. to which said declaration the said J. S. and M. have no need, nor are they obliged by the law of the land to answer; And this they are ready to verify: Wherefore for want of a sufficient declaration in this case, the said J. S. and M. pray judgment of the said declaration, and that the same may be quashed, &c. And the said J. S. and M. according to the statute shew the causes of demurrer following, *to wit*, that it is not alledged in the said declaration how, or by whom letters of administration was

granted, nor is it alledged that administration was ever granted to the said *F. S.* and *M.* And also that the said declaration is uncertain and wants form.

*Special demurrer to a plea of Nil debet to a bail-bond.*

And the said *E. H.* saith, that the said plea of him the said *F. S.* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar the said *E.* from having his said action against him the said *F.* and that he the said *E.* hath no need, nor is he obliged by the law of the land to answer the said plea of him the said *F.* in manner and form aforesaid above pleaded; And this he is ready to verify: Wherefore for want of a sufficient plea in this behalf the said *E.* prays judgment, and that his said debt, together with his damages by reason of the detaining of that debt, may be adjudged to him, &c. And for causes of demurring in law in this behalf, the said *E.* according to the form of the statute in such cases made and provided, shews to the court here these causes following; (that is to say) for this, that the said *F. S.* hath not by his said plea particularly denied nor confessed the said deed in the said declaration alledged; and also for this, that the said *F.* is estopped by the said deed to say, that he doth not owe the money in the said deed mentioned, and ought to have shewn by his plea how he is discharged from the same.

*Causes of demurrer.*

*Joinder.*

And the said *F. S.* saith, that the said plea by him the said *F.* in manner and form

form aforesaid pleaded, and the matter therein contained, are good and sufficient in the law to bar the said *E.* from having his said action against him the said *F.* which said plea, and the matter therein contained, he the said *F.* is ready to verify; and because the said *E.* to the said plea hath not answered, nor the same hitherto in any manner gainsaid, he the said *F.* doth pray judgment, and that the said *E.* may be barred from having against him the said *F.* his action aforesaid, &c.

*Judic. pro Q.*

And the said *A.* says, that the said plea of the said *J.* above by replying pleaded, and the matter therein contained are not sufficient in the law for the said *J.* to have and maintain his said action against him the said *A.* and that he has no need, nor is he obliged by the law of the land to answer to the said plea in manner and form aforesaid pleaded; And this he is ready to verify; Wherefore for defect of a sufficient plea in this behalf the said *A.* prays judgment, and that the said *J.* may be barred from having his said action against him the said *A.* &c.

*Demurrer to a replication.*

And the said *J.* for that he has above by replying alledged sufficient matter in the law, for him the said *J.* to have and maintain his said action against the said *A.* which the said *J.* is ready to verify; which matter the said *A.* does not deny, nor any ways answer thereto, but intirely

*Joinder.*

refuses to admit the verifying thereof; the said *J.* as before prays judgment, and his said debt, together with his damages by occasion of detaining that debt, to be adjudged to him, &c. And because, &c.

*Demurrer to a rejoinder.*

And the said *J.* says, that the said plea of the said *M.* above by rejoining pleaded, and the matter therein contained, are not sufficient in the law to bar the said *J.* from having his said action against the said *T.* and that he has not need, nor is obliged by the law of the land to answer to the said plea in manner and form aforesaid pleaded; And this he is ready to verify: Wherefore the said *J.* as before, prays judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

*Joinder.*

And the said *T.* for that the matter aforesaid by him above by rejoining alledged (which he is ready to verify) is sufficient in the law to bar the said *J.* from having his said action against him the said *T.* which said matter the said *J.* has not denied, nor any ways answered thereto, but intirely refuses to admit the verifying the same, prays judgment, and that the same *J.* may be barred from having his said action against him, &c.

3 Lev. 187.

*Of going to argument on demurrer.*

When demurrer is joined, the plaintiff's attorney makes up the demurrer book, and delivers a copy of it on double penny paper to the defendant's attorney, who must pay him for it after the rate of 4 d. per

per sheet, besides the duty, and also for entering his pleadings and warrant of attorney; then the plaintiff's attorney enters the whole proceedings on the roll, and having delivered it to the secondary gets a serjeant to move for a *Concilium*, or day for arguing the demurrer, and the secondary draws up a rule accordingly, which must be served on the defendant's attorney, and the demurrer put down in the book for argument.

As to delivering the paper-books, *vide antea* fol. 173, 174. Rule, Pas. 27 Car. 2.

The plaintiff's attorney shall deliver all the demurrer-books to the lord chief justice and the rest of the judges, and the defendant's attorney shall pay the plaintiff's attorney for two of the said books two days at least before the day appointed for arguing such demurrer, and the defendant shall not be heard by his counsel when the cause comes on to be argued, unless the said two books be accordingly paid for. *Mich. 6 Geo. 2.*

*As to delivering the paper-books.*

Where the defendant demurs to the declaration, his attorney shall be obliged to accept of notice of executing the writ of inquiry on the back of the joinder in demurrer; and where the defendant pleads such a dilatory plea that the plaintiff is obliged to demur, the defendant's attorney shall be obliged to accept of notice of executing a writ of inquiry on the back of such demurrer. *Trin. 10 Geo. 1.*

*Where on cases of demurrer of defendant's attorney is obliged to accept notice of inquiry.*

# Proceedings on Issues upon Nul tiel Record.

*Declaration in  
debt on a judg-  
ment.*

London, **R** D. late of London, carpenter,  
to wit, was summoned to answer un-  
to L. P. of a plea, that he render to him  
62 l. of lawful money of Great Britain,  
which he owes him and unjustly detains,  
Etc. and whereupon the said L. by J. C. his  
attorney saith, that whereas the said L.  
heretofore, that is to say, in Easter term  
in the fourth year of the reign of his pre-  
sent majesty king George the Second, in  
his said majesty's court, before Sir Robert  
Eyre, Knight, and his brethren, then his  
majesty's justices of the bench here, at  
Westminster in the county of Middlesex,  
by the consideration of the said court re-  
covered against the said R. 62 l. which  
were adjudged to the said L. in the said  
court for his damages which he had su-  
stained, as well by occasion of the not  
performing certain promises and underta-  
kings to the said L. by the said R. then  
lately made, as for his costs and charges  
by him about his suit in that behalf ex-  
pended, whereof the said R. is convicted,  
as by the record and proceedings thereof  
now remaining in his majesty's said court  
here more fully and at large appears,  
which said judgment still remains in its  
full strength, force and effect, not rever-  
sed, vacated, annulled, discharged or sa-  
tisfied ;

tified; and the said *L.* hath as yet obtained no satisfaction of the aforesaid judgment, whereby an action hath accrued to the said *L.* to demand and have of the said *R.* the said 62 *l.* yet the said *R.* altho' often requested, hath not rendered the said 62 *l.* or any part thereof to the said *L.* but to render the same to him hitherto hath denied, and still doth wholly deny, to the damage of the said *L.* 20 *l.* And thereupon he brings suit, &c.

And the said *R.* by *W. W.* his attorney *Plea Nul tiel* comes and defends the force and injury, *Record.* when, &c. and saith, that the said *L.* ought not to have his said action against him, because he saith, that there is not any such record of recovery of damages aforesaid against him the said *R.* in his said majesty's court, before Sir Robert Byre, Knt. and his brethren, his majesty's justices of the common bench, as the said *L.* in his declaration hath alledged; And this he is ready to verify: Therefore he prays judgment, if the said *L.* ought to have his said action thereof against him, &c.

And the said *L.* saith, that he by any *Replication.* thing before alledged ought not to be barred from having his aforesaid action maintained against the said *R.* because he saith, that there is such a record of recovery against him the said *R.* in his said majesty's court of common bench here remaining, as by the said declaration is above alledged; And this he is ready to verify by the said record, and he prays, that the said

said record may be inspected and seen by the justices here, &c. And because the said L. has not the said record now ready here in court, it is said by the said court here to the said L. that he have the said record here on *The* same day is given to the said R. here, &c.

*Rule for judgment on bringing record into court.*

On bringing the record into court on the day given, the secondary of course draws up a rule for judgment *Nisi Cause* within four days, and at the expiration of that time the secondary certifies at the foot of the rule that no cause hath been shewn, after which judgment may be signed.

*Judgment.*

The clerk of the judgments enters up the judgment.

The plaintiff must bring in the record at the day he has given himself, or the court will not receive it.

*Recovery in a former action pleaded in bar.*

And the aforesaid J. by J. D. his attorney comes and defends the force and injury, when, &c. and says, that the said T. ought not to have or maintain his said action against him, because he says, that after making the several promises and assumptions in the said declaration mentioned, and before the day of obtaining the original writ of the said T. *to wit*, in the term of St. *Michael* in the present year of the reign of the now king before Sir Robert Eyre, Knight, and his companions, justices of our said lord the king of the bench at *Westminster*, by bill, without the writ of the same king, and by the consideration

deration of the said court, recovered against the same *J.* 60*l.* for his damages which he had sustained as well by reason of the not performing the several promises and assumptions in the said declaration above mentioned, as for his costs and charges by him in his said suit in that behalf laid out and expended, as by the record and process thereof in the said court of our said lord the king of the bench at *Westminster* fully appears. And the said *J.* avers, that the promises and assumptions in the said record mentioned, and the promises and assumptions in the said declaration above mentioned, are the same promises, and assumptions, and not other or different; And this the said *J.* is ready to verify: Whereupon he prays judgment, if the said *T.* ought to have or maintain his said action against him, &c.

And the aforesaid *T.* says, that he by any thing alledged by the said *J.* in the above pleading ought not to be precluded from having his action aforesaid against the said *J.* because he says, that there is not any such record of the said recovery against the said *J.* at the suit of the said *T.* as he the said *J.* above in pleading hath alledged; And this he is ready to verify: Whereupon he prays judgment, and that his said damages may be adjudged to him, &c.

*Replication,*  
Nul tiel Record.

And the aforesaid *J.* says, that there is a record of the said judgment as the said *J.* above in pleading hath alledged; and this

*Rejoinder.*

Day given to  
produce the re-  
cord.

this he is ready to verify by the said record, and prays, that the said record may be seen and inspected by the justices here. And because the said record is not now had here, it is commanded the said J. that he have here the said record in

Def. fails in  
producing the  
record.

(the day) at his peril. The same day is given as well to the said T. as to the said J. here, &c. At which day come here as well the said T. as the said J. by their said attornies, and the said J. hath not here the said record, but maketh default; whereby it sufficiently appears to the said justices here, that there is not any such record of the said recovery, as the said J. hath above alledged: Wherefore, &c. (Judgment.)

Q. If there was not here a complete issue upon the replication, and the rejoinder unnecessary.

That the plt.  
is outlawed in  
another court.

And the said T. by F. K. his attorney comes and defends the force and injury, when, &c. and saith, that the said J. ought not to have his aforesaid action against him the said T. thereon, because he saith, that one C. T. heretofore (that is to say) in *Easter* term in the fifth year of the reign of his present majesty, by an original writ impleaded the said J. by the name of J. H. late of *London*, Gent. in the court of the said now king, before the king himself (the said court then and still being at *Westminster* in the county of *Middlesex*) in a plea of trespass; and the said J. because he did not appear in his said majesty's

majesty's court before the said king, to answer unto the said C. in the aforesaid plea, according to the law and custom of this realm, was put in exigent to be outlawed in *London*; and for that reason afterwards, *to wit*, on *Monday* next before the feast of the Purification of the Blessed Virgin *Mary* in the sixth year of the reign of his present majesty, in the said court of our said lord the now king before the said king himself, was outlawed in due form of law at the suit of the said C. in the said plea, and still remains outlawed, as by the record and proceedings thereof in his said majesty's court, before the king himself at *Westminster* aforesaid returned, and now there remaining, may more fully appear; And this he is ready to verify by the said record: Wherefore he prays judgment, whether the said J. ought to have his said action therefore against him.

And the said J. saith, that he, by any thing by the said T. in his plea above alledged, ought not to be barred from having his said action against him, because he saith, that there is not any such record of outlawry in his said majesty's court before the king himself, as the said T. by his said plea hath alledged; And this he is ready to verify in such manner as the court shall award. And the said T. is commanded that he have the said record here on the morrow of the Ascension of our Lord at his peril; And the same day is given to the said J. here, &c. At which day

*Replication,  
Nul tiel Record.*

*Day given to  
produce the record.*

*Def. makes  
default.*

day here come as well the said *Y.* as the said *T.* by their attornies aforesaid; and the said *T.* hath not here the said record, but maketh default thereof: Wherefore, &c.

*Notice of inquiry on issue of Nul tiel Record.*

Upon an issue of *Nul tiel Record*, notice of executing a writ of inquiry may be given upon the issue-book, as well as upon a joinder in demurrer. *Long against Lingwood, Hil. 8 Geo. 2.*

### *Of Judgments by Default.*

*Of entering judgment by default.*

**I**F the defendant does not plead by the time limited by the rules of the court (for which see before, fol. 99, 142, &c.) the plaintiff may sign his judgment with the prothonotary, in whose office the proceedings are entered. In debt the judgment is final, and signed on a double half-crown stamp; but in trespass, trespass on the case, &c. the first judgment is only interlocutory and not final, till the inquiry is returned, when you get the inquiry stamped with a double half-crown stamp, and then the prothonotary taxes your costs *de Incremento*, which is called signing the final judgment.

In entering your judgment you leave about an inch margin, and begin about ten inches from the top of the roll, the declaration thus:

**I**

London,

London, *C. D.* late of London, merchant, *Judgment in*  
*to wit,* *C.* was attached to answer *A. B.* *debt.*  
 in a plea of trespass on the case; and  
 whereupon, &c. (*to the end of the de-*  
*claration*) And thereupon he brings suit,  
 &c.

Then beginning a new line, you enter  
 the judgment in the following manner:

And the said *C. D.* by *C. H.* his attor- *By Nil Dicit.*  
 ney comes and defends the force and in-  
 jury, when, &c. and says nothing in bar  
 or preclusion of the action of the said  
*A. B.* by which the said *A. B.* remains  
 thereupon undefended against the said *C.*  
 Therefore it is considered that the said *A.* *Judgment*  
 recover against the said *C.* his said debt, *signed 5 May*  
 and his damages by occasion of the detain- *1739.*  
 ing the said debt to 53 s. by the court here  
 adjudged to the said *A. B.* by his assent.  
 And the said *C.* in mercy, &c. *Mercy.*

And the said *B.* by *C. D.* his attorney *Cognovit Ac-*  
 comes and defends the force and injury, *tionem in debt.*  
 when, &c. and says, that he cannot deny  
 the action of the said *E.* nor but that he  
 owes to the said *E.* the said 10 l. in man-  
 ner and form as the said *E.* has above de-

---

By the statute 29 Car. 2. c. 3. s. 14. Any judge or *Day of signing*  
 officer of any of the courts at *Westminster*, who shall *judgment to be*  
 sign any judgment, shall at the time of signing it (with- *set down.*  
 out fee) set down the day and year of his so doing upon  
 the paper-book, docket or record, which day and  
 year shall be set down on the margin of the roll of the  
 record where such judgment shall be entered.

clared

*Judgment  
signed  
of  
1739.*

clared against him: It is therefore considered that the said *E.* recover against the said *B.* his said debt, and his damages by occasion of the detaining that debt to 53 s. by the court here adjudged to the said *E.* by his assent; and the said *B.* in mercy, &c.

*Cognovit Actionem in debt  
on a bond.*

And the said *T.* by *L. R.* his attorney comes and defends the force and injury, when, &c. and says, that he cannot deny but that the said writing obligatory is the deed of him the said *T.* nor but that he owes to the said *W.* the said 10 l. in manner and form as the said *W.* has above declared against him: It is therefore considered, &c. *as before.*

*Judgment by  
Non sum In-  
formatus.*

And the said *L.* by *T. S.* his attorney comes and defends the force and injury, when, &c. and the same attorney says, that he is not informed by the said *L.* of any answer to be given for the said *L.* to the said *R.* in the plaint aforesaid; and he says nothing else thereupon; by which the said *R.* remains thereupon undefended against the said *L.* It is therefore considered, &c.

*Nil Dicit in  
case.*

And the said *C. D.* by *E. T.* his attorney comes and defends the force and injury, when, &c. and says nothing in bar or preclusion of the action of the said *G.* by which the said *G.* remains thereupon undefended against the said *C.* For which the said *E.* ought to recover against the said *C.* his damages by occasion of the premisses. But because it is not known

what damages the said G. has sustained <sup>*Inquiry*</sup> by occasion of the premisses, it is there- <sup>*awarded.*</sup> fore commanded to the sheriff, that by the oath of good and lawful men of the county aforesaid he diligently inquire what damages the said G. has sustained as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended ; And that the inquisition which he shall thereupon make he make appear to the justices of our lord the king at *Westminster*, on the morrow of the holy *Trinity*, under his seal, and the seals of them by whose oath he shall make the said inquisition.

If the action be in case *Sur assumpsit*, instead of saying [*by occasion of the premisses*] say [*by occasion of the not performing the promises and undertakings aforesaid.*]

If in trespass, say [*by occasion of the trespass aforesaid.*]

If in trespass and assault, say [*by occasion of the trespass and assault aforesaid.*]

If in trespass, assault and imprisonment, say [*by occasion of the trespass, assault and imprisonment aforesaid.*]

In covenant say [*by occasion of breaking the said covenant.*]

If the defendant, after having pleaded *per minas* or *per duces*, and issue taken thereon, is willing to confess the action, the entry of such confession is to be in this manner.

At which day here cometh as well the said *A.* as the said *B.* by their attornies  
Vol. I.                      O                      afore-

Relicta Veri-  
ficatione and  
Cognovit Ac-  
tionem after  
per Minas  
pleaded.

aforesaid, and thereupon the said *B.* relinquishing his averment aforesaid above by him pretended says, that he cannot deny the action of the said *A.* thereupon, nor but that he at the time of making the said writing was of his own right at large, and made the said writing to the said *A.* of his mere and free will, and not for fear of threatnings, as the said *A.* has above alledged: It is therefore considered, &c. as before.

If the defendant confess the action after *Non est factum* pleaded, and issue joined, the entry is thus:

The like after  
*Non est fac-  
tum* pleaded.

At which day here cometh as well the said *R.* as the said *S.* by their attornies aforesaid, and hereupon the said *S.* relinquishing his averment aforesaid above by him pretended, says, that he cannot deny the said action of the said *R.* nor but that the said writing is the deed of the said *S.* nor but that he owes the said *R.* the said 100*l.* in manner and form as the said *R.* above complains against him: It is therefore considered, &c.

Non sum In-  
formatus in  
case.

And the said *B. C.* by *D. E.* his attorney comes and defends the force and injury, when, &c. and the same attorney says, that he is not informed by the said *B.* of any answer for the said *B.* to be given to the said *E.* in the plaint aforesaid; For which the said *E.* ought to recover his damages by occasion of the premisses against the said *B.* But because it is unknown what damages the said *E.* has sustained

sustained by occasion of the premisses, it is commanded to the sheriff, that by the oaths of twelve good and lawful men of his bailiwick he diligently inquire what damages the said *E.* has sustained as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which he shall thereupon take he make appear to the justices of our lord the king at *Westminster*, in five weeks from the day of *Easter*, under his seal, and the seals of, &c.

The clerk of the judgments enters up the final judgment. See his duty under the head of the officers of the court, fol. 10.

No bailiff or sheriff's officer shall presume to exact or take from any person being in his custody any warrant to acknowledge a judgment but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereunto; which said warrant shall be produced when the said judgment shall be acknowledged. *Hil. 15, 16 Car. 2.*

*No warrant to confess a judgment to be taken of a prisoner, unless an attorney on his behalf be present.*

No attorney shall enter or acknowledge, or cause to be entered or acknowledged, any judgment by colour of any warrant gotten from any defendant being under arrest, otherwise than is aforesaid. *Same Rule.*

But if the defendant be an attorney, or practices as such, 'tis sufficient, though no attorney on his behalf be present.

*Aliter if def. be an attorney.*

*Warrant of attorney to confess a judgment to be read by or to the party.*

Every warrant of attorney for confessing a judgment in this court shall be read over by the person who is to execute the same, or by some other person to him before the execution thereof; And if judgment shall be entered up upon any such warrant of attorney which shall not be so read over as aforesaid, such judgment upon any motion may be set aside as irregular. *Trin. 14, 15 Geo. 2.*

*On warrant of a year standing judgment can't be entered without leave of the court.*

If judgment on a warrant of attorney be not entered up within a year, the plaintiff must apply to the court for leave to enter up the judgment, making an affidavit of the due execution of the warrant, that the debt is unsatisfied, and the defendant living.

*Of a special original to support the judgment.*

If the plaintiff has judgment, and it be not upon a verdict, his attorney must make out a *Præcipe* for a special original returnable on the first return of that term, in which the judgment (or interlocutory judgment in case of a writ of inquiry) is entered.

### *The Form of a Præcipe for a Special Original in Case.*

*Præcipe for a special original.*

Middlesex, **I**F L. B. shall give you security to wit, I rity to prosecute his suit, then put by sureties and safe pledges C. M. late of *Westminster* in the county of *Middlesex*, Esq; that he be before our justices at *Westminster* from the day of *St. Michael* in

in three weeks, to shew, That whereas Ind. Aff. for  
the said C. on the 25th day of Sept. in the use of hor-  
the year of our Lord 1738. at Westminster ses, coach, &c.  
in the said county of *Middlesex*, was in- and attendance  
debted to the said L. in the sum of 200*l.* of servants.  
of lawful money of *Great Britain*, for the  
hire of diverse horses, mares and geldings  
of him the said L. and for the labour and  
attendance of diverse of his servants, and  
also for the use of diverse of his coaches  
and chariots by him the said C. at his spe-  
cial instance and request before that time  
used, hired and had; and being so in-  
debted, the said C. in consideration there-  
of afterwards, *to wit*, on the same day  
and year aforesaid, at *Westminster* afore-  
said in the said county of *Middlesex*, took  
upon himself, and to the said L. then and  
there faithfully promised, that he the said  
C. the said 200*l.* to him the said L. when  
he should be afterwards thereunto re-  
quired, would well and truly pay and con-  
tent. And also whereas the said C. after- Quantum Me-  
wards, *to wit*, on the same day and year ruit thereon.  
aforesaid, at *Westminster* aforesaid in the  
said county of *Middlesex*, in consideration  
that the said L. had before that time, at  
the like special instance and request of him  
the said C. let to hire to him the said C.  
diverse other horses, mares and geldings,  
and diverse other coaches and chariots of  
him the said L. and had also before that  
time by diverse of his servants done and  
performed for him the said C. diverse other  
labours and attendances, took upon him-  
self,

Infimul Com-  
putasset.

*Breach.*

self, and to the said L. then and there faithfully promised, that he the said C. so much money, as he the said L. should reasonably deserve to have for the same, to him the said L. when he should be afterwards thereunto required, would well and truly pay and content. And he the said L. doth aver, That he the said L. reasonably deserved to have for the same the further sum of 200*l.* of like lawful money, to wit, at *Westminster* aforesaid in the county aforesaid, whereof the said C. then and there had notice. *And also whereas* the said C. afterwards, to wit, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, had accounted with him the said L. touching and concerning diverse other sums of money by him the said C. to him the said L. then due and in arrear, and unpaid; and upon that account he the said C. was found in arrear to him the said L. in the sum of 132*l.* 7*s.* of like lawful money, and being so found in arrear he the said C. in consideration thereof afterwards, to wit, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, took upon himself, and to him the said L. then and there faithfully promised that the said C. the said 132*l.* 7*s.* last mentioned, to him the said L. when he should be afterwards thereunto required, would well and truly pay and content: *Nevertheless* the said C. in no wise regarding his said several promises and undertakings so made by him

him as aforesaid, but contriving and fraudulently intending him the said *L.* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any part thereof, to him the said *L.* (although oftentimes thereunto required by him the said *L.* *to wit*, on the 25th day of *September*, and often afterwards, at *Westminster* aforesaid in the county aforesaid) hath not paid, but hath altogether refused, and still doth refuse to pay him the same, to the damage of the said *L.* 200 *l.* as he says.

R. R.

*Returnable—in three  
weeks of St. Mich.*

This *Præcipe* must be carried to the cur-  
sitor of the county in which the action is  
laid, on or before the *essoin*-day of the  
subsequent term, pursuant to the follow-  
ing order.

No cursitor shall make, or permit to be made, within his respective office and di-  
vision, any original writs whatsoever of any  
return past, unless he shall receive the in-  
structions for making thereof within the  
term wherein the said writs are to be re-  
turnable, or at farthest *on or before* the *es-*  
*soin*-day of the next succeeding term,  
without special warrant from the lord  
chancellor or lord keeper of the great seal  
of *England*, or master of the rolls for the  
time being. *Lord Clarendon's Orders in  
Chancery.*

*Fine to the  
king.*

If the debt demanded, or damages laid, exceed 40*l.* the plaintiff pays a fine to the king in proportion to such debt or damages, as follows;

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From 40 <i>l.</i> to 100 marks —	0	6	8
From 100 marks to 100 <i>l.</i> —	0	10	0
From 100 <i>l.</i> to 200 marks —	0	13	4
From 133 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> to 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> —	0	16	8
From 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> to 200 <i>l.</i> —	1	0	0
And for every 100 marks more	0	6	8
And for every 100 <i>l.</i> more —	0	10	0

*Of returning  
the original.*

When the cursitor has made out the original, the plaintiff's attorney returns it of course thus:

Pledges to prosecute { *John Doe,*  
                                      *Richard Roe.*

The within named C. M. hath nothing in my bailiwick whereby he can be \* attached,

The answer of  
George Heathcote, Esq; } Sheriff.  
Sir John Lequesne, Knt. }

And then he files it with the *Custos Bre-  
vium.*

*Warrants of  
attorney.*

He must also file a warrant of attorney for the plaintiff, and one for the defendant, if he appeared by attorney. *Vide antea, fol. 152, 153, 154.*

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\* *Vide antea, fol. 95, 96.* the difference between at-  
tached and summoned.

## Of Writs of Inquiry.

**W**HEN you have signed your inter-locutory judgment, you are to give the defendant notice of executing the writ of inquiry; and in some instances you may give notice of executing the writ of inquiry before you have signed interlocutory judgment, as in cases of demurrers and issues on *Nul tiel Record*, as appears *fol. 183. and 190.*

In *London or Middlesex* (the defendant dwelling within forty miles of *London*) there must be eight days notice given of executing a writ of inquiry, exclusive of the day whereon the notice is given. *Where 8 days notice of executing writ of inquiry in London or Middlesex.*  
*Mich. 1654.*

But if the defendant lives above forty miles from *London*, and the inquiry is to be executed in *London or Middlesex*, there must be fourteen days notice, exclusive of the day of the notice. *Where 14 days.*  
*Same Rule.*

And eight days notice, exclusive of the day of the notice, must be given of executing writs of inquiry in the country. *Eight days notice in the country.*  
*Same Rule.*

If there have been no proceedings for twelve months after judgment there must be a term's notice given of executing a writ of inquiry of damages; and such notice must be given before the essoin-day of the term. *Where a term's notice.*  
*Vide antea, fol. 155. Rule, Pas. 13 Geo. 2.*

Where

Where plt. concludes ad patriam, gives notice of trial, and deft. don't join issue, notice of inquiry to be from the time notice of trial was given.

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of his pleading (pursuant to the rule of *Trinity 2 Geo. 1. antea, fol. 156.*) if the defendant does not join issue on such pleading before the rule is out, the defendant's attorney shall, after judgment obtained, be obliged to accept notice of executing a writ of inquiry from the time that the notice of trial was given on the back of such pleading, as aforesaid. *Hilary 6 Geo. 1.*

Where notice of inquiry may be given on demurrer or joinder in demurrer.

*Vide antea, fol. 183.* Where defendant shall be obliged to accept notice of executing a writ of inquiry on the back of a joinder in demurrer or demurrer; and *fol. 190.* where he shall be obliged to accept the like notice on the back of an issue of *Nul tiel Record.*

Where notice to be delivered to deft. or left at his last place of abode.

Where the plaintiff has entered an appearance for the defendant, pursuant to the act of parliament, left a declaration for him in the office, given him proper notice thereof, and signed judgment for want of a plea, he may give notice of executing his writ of inquiry either by delivering the notice in writing to such defendant, or leaving the same for him at his last or most usual place of abode, which shall be a sufficient notice to such defendant. *Mich. 1 Geo. 2.*

Notice of inquiry not to be given to deft. if his attorney be known.

Notice of trial or of executing a writ of inquiry given to a defendant, when his attorney is known, is not good notice; but when the defendant's attorney is not known,

known, notice of trial or of executing a writ of inquiry may be given to the defendant.

*The Form of the Notice.*

*Common Pleas.*

*John Denn  
against  
Richard Fenn.*

*S I R,*

Be pleased to take notice, that a writ *The form of a*  
of inquiry of damages in this cause *notice of in-*  
will be executed on *Monday* the four-*quity.*  
teenth day of *May* instant, at eleven  
of the clock in the forenoon, at the  
*Court-House at Westminster.*

*Your humble Servant,*

*To Mr. N. C.  
Attorney for Deft.*

*L. R.  
Attorney for the Plt.  
4th May 1739.*

Notice of executing a writ of inquiry *As to the time,*  
at eleven of the clock in the forenoon is  
good, if the writ be executed before twelve.

Notice of executing a writ of inquiry  
between the hours of eleven and two is  
bad, it should be confined to two hours  
at most, as between ten and twelve.

Notice of executing a writ of inquiry  
at ten in the forenoon, or so soon after  
as the sheriff can attend, is bad for incer-  
tainty.

The notice should be certain as to the *And place.*  
place, viz. the house, street, &c. A no-  
tice of executing a writ of inquiry at the  
sign

sign of the *Three Tons* in *Brook-street*, *Middlesex*, was held bad, not saying where that *Brook-street* was, viz. in *Holborn*, there being three *Brook-streets* in *Middlesex*. *Le-mark v. Newman*, Trin. 10 Geo. 2.

*A Writ of Inquiry of Damages.*

*Writ of inquiry.*

**G**EORGE the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To the sheriff of *Middlesex*, greeting. Whereas *B. C.* late of *S.* in your county, gentleman, was attached to be in our court before our justices at *Westminster*, to answer *D. E.* in a plea, Wherefore whereas the said *B.* on the tenth day of *March* in the year of our reign, at *Westminster* in the county of *Middlesex*, &c. [as in the declaration to] to the damage of the said *D.* of fifty pounds, as he says; and it was in such manner proceeded in our said court, that the said *D.* ought to recover against the said *B.* his damages, by occasion of the not performing the said promises and undertakings (or by occasion of the premisses, by occasion of the said trespass, trespass and assault, breach of the covenant, or the like, as the action is.) But because it is unknown what damages the said *D.* has sustained by occasion of the premisses, we command you, that by the oath of twelve good and lawful men of your county (if in London, say, of your bailiwick) you diligently inquire what damages

mages the said D. has sustained as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; And the inquisition which you shall make thereof make appear to our justices at *Westminster*, on the morrow of the Ascension of our Lord, under your seal, and the seals of them by whose oath you shall make that inquisition; And have you there the names of them by whose oath you shall make that inquisition, and this writ. Witness Sir *John Willes*, Knight, at *Westminster*, the day of \_\_\_\_\_ in the twelfth year of our reign.

*Thomson.*

If the action be at the suit of an attorney of the court, the writ of inquiry is in this form:

GEORGE the Second, &c. To, &c. *The form when*  
Whereas C. V. was attached by our writ *at the suit of*  
of privilege issuing out of our court here, *an attorney.*  
to be before our justices at *Westminster*, to  
answer S. O. Gentleman, one of the attornies of our court of the bench, according to the liberties and privileges of the same court, for such attornies and other ministers of the same bench time out of mind used and approved in the same; for that,  
*to wit,* That whereas the said S. on the  
day of, &c. *(setting forth the declaration to)* to the damage of the said C. of twenty pounds, as is said; and it was in such manner proceeded in our said court,

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court, That, &c. (as before, making the writ returnable on a day certain, as on Monday next after fifteen days of Easter, and not on a general return day.)

*When against  
an attorney.*

If an attorney be defendant, the form is thus:

GEORGE the Second, &c. To, &c. Whereas D. W. by W. T. his attorney, came into our court before our justices at Westminster, and exhibited to our said justices his bill against T. P. Gentleman, one of the attornies of our court of the bench, present in our said court, in his proper person, For that, &c. (as before) and the writ to be returnable on a day certain.

Writs of inquiry are to be signed by the prothonotary before they are sealed.

If your witnesses will not voluntarily attend, you may have a *Subpoena* for them in this form:

*Subpoena ad  
Testif. on a  
writ of inqui-  
ry.*

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To A. B. C. D. E. F. and G. H. greeting. We command you, and each of you, firmly injoining, that all other matters laid aside, and notwithstanding any excuse, you be in your proper persons before the sheriff of Middlesex at the Court-House at Westminster, on the day of at eleven of the clock in the forenoon of the same day, to testify the truth in a certain matter of controversy depending

depending in our court before our justices of the bench, between K. J. plaintiff, and S. H. defendant, in a plea of trespass on the case; and this you are not to omit under the penalty of one hundred pounds. Witness Sir John Willes, Knight, at Westminster, the twelfth day of May in the twelfth year of our reign.

Thomson.

When the writ is signed and sealed, you make out tickets for the witnesses, as before directed on *Subpoenas* for trials, fol. 166.

When the writ of inquiry is returned by the sheriff, you get the inquisition stamped with a double half-crown stamp, and then carry it to the prothonotary to tax your costs, and after that you deliver it to the clerk of the judgments to enter up final judgment on the roll.

Where final judgments shall be signed on inquisitions upon writs of inquiry, the inquisition shall be immediately left with the clerk of the judgments of the respective prothonotary, and shall not afterwards be taken out of the office without leave of the court. *Trin. 29 Car. 2. Trin. 13 Geo. 2.*

*On signing judgment the inquisition to be left with the clerk of the judgments.*

Where notice is given of a writ of inquiry, and not countermanded in time, the defendant shall be intitled to costs from the plaintiff, for not executing such writ of inquiry, in the same manner as a defendant, by the course of the court, is now intitled to costs from a plaintiff who does

*If inquiry not executed according to notice, deft. to have costs.*

does not proceed to trial of an issue joined after notice given. *Trin.* 13 *Geo.* 2.

### Of bringing in Rolls and Docketing the Rolls.

*Attorney on receiving roll from prothonotary's office to sign the book.*

EVERY attorney that shall receive any roll, either plea or common, from the respective prothonotaries of this court, shall sign and set his name to such prothonotary's book, from whom he shall receive the same; and no prothonotary shall deliver any roll but to the proper hand of some known attorney or clerk of their respective offices. *Pas.* 34 *Car.* 2.

*Rolls not to be carried into the country.*

No attorney shall carry any rolls of this court into the country. *Pas.* 12 *Jac.* 1. *Mich.* 1649. *Mich.* 1654. *Pas.* 34 *Car.* 2.

*When attorneys are to bring in their rolls. Easter term.*

Every attorney of this court, that shall receive any roll or rolls as aforesaid, plea or common, of any *Easter* term, shall bring the same into the office from whence he received it on or before the first day of the next *Trinity* term.

*Trinity.*

And the rolls received of any *Trinity* term shall be brought into such office on or before the feast-day of St. *Michael* the Archangel next ensuing the said term.

*Michaelmas.*

And the rolls received of any *Michaelmas* term shall be brought into such office on or before the sixth day of *January* next ensuing.

*Hilary.*

And the rolls received of any *Hilary* term shall be brought into such office by the

the space of four days before the feast of *Easter* next after the said term. *Pasch.*

34 *Car.* 2.

The prothonotaries, on delivering the *Caret paper*. common rolls to the clerk of the warrants, are also to deliver a note of the rolls that are wanting, the same note to be subscribed by the clerk of the warrants, and redelivered to the prothonotary; and the clerk of the warrants, on delivering over the common rolls to the clerk of the effoins, is to take the like note from the clerk of the effoins of the rolls wanting.

*Mich.* 1654.

The clerk of the effoins shall not deliver out any post-rolls, or other rolls of this court, to any attorney or clerk of this court, but to the respective prothonotaries and other officers of this court, that have a right to such rolls. *Pasch.* 34

*Car.* 2.

The several and respective officers of this court shall deliver in all their rolls of *Trinity*, *Michaelmas* and *Hilary* term, to the clerk of the effoins, before the effoin-day of the several terms following; and their rolls of *Easter* term upon or before the first day of *Trinity* term following; and the officer who shall not bring or send in all his rolls of the said several terms at the times aforesaid shall pay to the clerk of the effoins for every roll brought in after, 12 d. 6 fac. 1. *Pas.* 5 W. & M.

The plea rolls of every term shall be brought in to the clerk of the effoins three

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weeks

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weeks after the end of the term following, and in default thereof, there shall be likewise paid to the clerk of the effoins, for every plea roll brought in after, 12*d. Pas.* 5 *W. & M.*

*The clerk of the effoins to lay before the court an account of what rolls are wanting.*

The clerk of the effoins shall a fortnight within every term lay before the court an account of what rolls are wanting, that ought to have been brought in according to the said rules, together with the attorney's names who took them out of the said offices, that this court may proceed as they shall think fit against such persons as shall not have brought in their rolls according to the said rules. *Trin. 2 Geo. 1.*

*Of docketing judgments.*

On carrying in your rolls to the prothonotary you are to docket them on the common docket, in the manner as you'll see others, thus:

Not informed in debt.

*Middlesex.* *West for Burton* } *Roll 225.*  
*Parker for Taylor,*

Says nothing in case.

*M.* *Same for same,* } *Same.*  
*Same for same,*

Forejudger.

*M.* *Same for Wace,* } *342.*  
*against*  
*Wilson an attorney,*

Execu-

Execution by default.

*M.*

Same for same,

against

*Vanbrugh* administ.

} Same.

The prothonotary delivers the rolls over to the clerk of the warrants, who is to inspect the same, and estreat all fines and amerciaments against sheriffs and others that he shall find amongst the said rolls, and then to deliver them to the clerk of the essoins, who docketts them, pursuant to the statute of 4 & 5 of *W. & M. c. 20.* then binds them up, and carries them over to the Treasury at *Westminster*.

## *Of Executions.*

1. **A** *Capias ad Satisfaciendum* is a writ *Ca. Sa.* which issues after a judgment; and by this writ the sheriff is commanded to take the body of the defendant, and have him in court at the return of the writ to satisfy the plaintiff.

This writ was by the common law only in trespasses, *Quare vi & Armis*, being direct and wilful wrongs; but now by the statute 25 *Ed. 3.* may issue in other cases. It is deemed a full execution, and in the law sufficient for the whole debt; *Corpus humanum non recipit æstimationem*; and where the body is taken on a *Capias ad Satisfaciendum*, no other execution can be had against the defendant's lands or goods.

*If deft. dies in execution, plt. may have execution against the lands or goods.*

But in case the defendant dies in execution, by the statute 21 Jac. 1. c. 24. the plaintiff, his executors or administrators, may lawfully sue forth execution against the lands and tenements, goods and chattels of the defendant so dying in execution, in like manner as if the deceased defendant had never been taken in execution: In this case the judgment must be revived by *Scire facias*.

If two be bound jointly and severally to me, and I sue them jointly, I may have a *Capias* against them both, and the death or escape of one, shall not discharge the other, but I cannot have a *Capias* against the one, and another kind of execution against the other, because though they be two several persons, yet they make but one debtor, when I sue them jointly; but if I sue them severally I may sever them in their kinds of execution; though if once a very satisfaction be had of one, or against the sheriff for an escape of one, the rest may be relieved upon an *Audita Querela*. Hob. 59.

Fi. fa.

2. A *Fieri facias* is a writ which commands the sheriff to levy the debt or damages and costs recovered by a judgment, of the goods of the defendant, and to have the same in court at the return of the writ to satisfy the plaintiff.

*Where executed after defendant's death.*

3 Danv. 319.  
pl. 8.

If after this writ is sued out, and before it is executed, the defendant dies, it may be executed on his goods in the hands of his executors or administrators.

If

If only part of the debt or damages be levied, the plaintiff may have a *Ca. fa.* <sup>*If only part levied, Ca. fa.*</sup> or *Elegit* for the residue. *Hob. 57, 58.* <sup>*or Elegit for residue.*</sup>

3. *Elegit*; this writ is given by the statute of *W. 2. 13 Ed. 1. c. 18.* And by this writ the sheriff is to deliver to the plaintiff all the chattels of the defendant, except his oxen and the beasts of his plow, and one half of his land, to hold until the debt or damages, and costs recovered, be satisfied, upon a reasonable price or extent.

If on an *Elegit* only goods be levied, and these not sufficient to satisfy the judgment, the plaintiff may have a *Capias* <sup>*If only part levied, Ca. fa.*</sup> for the residue, it being in effect but a *Fieri facias.* *Hob. 58.*

If I take out a *Ca. fa.* or *Fi. fa.* and they take no effect, I may have one of them after another, or an *Elegit* after both, if they fail. *Hob. 57.*

If the judgment be on a bond with a penalty, the plaintiff may, as far as the penalty will extend, levy the poundage payable to the sheriff, and all incident charges of the execution.

If execution be not sued out within a year, the judgment must be revived by *Scire facias.*

*Capias ad Satisfaciendum in Debt.*

GEORGE the Second, by the Grace <sup>*Ca. fa. in debt.*</sup> of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To

U

the sheriffs of *London*, greeting. We command you, that ye take *W. B.* late of *London*, cabinet-maker, otherwise called *W. B.* late of the parish of \_\_\_\_\_ in the county of *Middlesex*, cabinet-maker, if he be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on the morrow of the Holy *Trinity*, to satisfy *R. R.* as well of a certain debt of fifty pounds, which the said *R.* in our court before our justices at *Westminster* recovered against him, as of sixty-three shillings, which in our said court were adjudged to the said *R.* for his damages, which he had by occasion of the detaining that debt, whereof the said *W.* is convicted; And have there this writ. Witness Sir *John Willes*, Knight, at *Westminster*, the \_\_\_\_\_ day of \_\_\_\_\_ in the twelfth year of our reign.

*Trespass on the case.*

To satisfy *R. R.* of fifty pounds, which were adjudged to the said *R.* in our said court, before our justices at *Westminster*, for his damages which he sustained by occasion of a certain trespass on the case done to the said *R.* by the said *W.* at *S.* in your county, whereof he is convicted; And have you there this writ. Witness, &c.

*Trespass on the case sur assumpsit.*

For his damages which he had by occasion of the not performing certain promises and undertakings made to the said *R.* by the said *W.* at *W.* in your county; whereof, &c.

For

For his damages which he had by oc- <sup>Breach of co-</sup>  
 casion of the not performing a covenant <sup>venant.</sup>  
 made between the said *W.* and the said *R.*  
 according to the force, form and effect of  
 certain indentures [*or articles*] made be-  
 tween them ; whereof, &c.

For his damages which he sustained by <sup>Trespass and</sup>  
 occasion of a certain trespass and assault, <sup>assault.</sup>  
 made on the said *R.* by the said *W.* with  
 force and arms, and against our peace, at  
*W.* in your county ; whereof, &c.

For his damages which he sustained by <sup>Trespass.</sup>  
 occasion of a certain trespass done to the  
 said *R.* by the said *W.* with force and  
 arms, and against our peace, at *L.* in your  
 county ; whereof, &c.

For his damages which he sustained by <sup>In ejectment</sup>  
 occasion of a certain trespass and eject- <sup>for damages.</sup>  
 ment of a farm done to the said *R.* by the  
 said *W.* with force and arms, and against  
 our peace, at *L.* in your county ; whereof,  
 &c.

For his damages which he had by oc- <sup>Replevin.</sup>  
 casion of the taking and unjustly detaining  
 the cattle of the said *R.* at *W.* in a certain  
 place called the *H.* in your county ; where-  
 of, &c.

For his damages which he had by occa- <sup>Words.</sup>  
 sion of the speaking and publishing certain  
 false and scandalous words by the said *W.*  
 of the said *R.* at *B.* in your county ;  
 whereof, &c.

If you make out a *Testatum Ca. sa.* you <sup>Testatum Ca.</sup>  
 are to write as before, to [whereof he is sa.  
 convicted *inclusive*] and after those words

you are to proceed thus; and whereupon our sheriff of N. [*the sheriff to whom the first Ca. fa. was directed*] sent to our justices at *Westminster* at a certain day now past, that the said *W.* was not found in his bailiwick, whereas it is testified in our said court, that he lurks and secretes himself in your county; And have there, &c.

Ca. fa. after a  
Sci. fa'.

If it be after a *Sci. fa.* then after the words [whereof he is convicted] say, and whereupon it is considered in our said court, that the aforesaid *R.* have his execution against the aforesaid *W.* of the debt and damages aforesaid, by the default of the said *W.* And have there, &c.

A Testatum  
Ca. fa. after a  
Sci. fa. by an  
administ. du-  
rante minori-  
tate executoris  
of an executor.

*GEORGE* the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To the sheriff of *S.* greeting. We command you, that you take *V. C.* late of, &c. if he be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on the octave of the Holy *Trinity* to satisfy *J. F.* administrator of the goods and chattels which were of *B. F.* during the minority of *W. F.* executor of the testament and last will of the said *B.* late executor of the testament and last will of *W. B.* deceased, as well of a certain debt of sixty pounds, which the aforesaid *B.* lately in our court before our justices at *Westminster* recovered against the said *V.* as of fifteen pounds, which in our said court were adjudged

judged to the said *B.* for his damages which he had by occasion of the detaining that debt whereof the said *V.* is convicted; And whereupon it is considered in our said court, That the aforesaid *J.* have his execution against the said *V.* of the debt and damages aforesaid, by the default of the said *V.* And whereupon our sheriffs of our city of *Exeter* have returned to our justices at *Westminster* at a certain day now past, that the aforesaid *V.* is not found in their bailiwick, whereas it is testified in our said court, that the said *V.* lurks and secretes himself in your county; And have there this writ. Witness, &c.

*GEORGE* the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To the sheriff of *Lincoln*, greeting. We command you, that you take *W. G.* late of *S.* in the county of *Leicester*, Gentleman, otherwise called *W. G.* of *S.* in the county of *Leicester*, Gentleman, if he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* in fifteen days from the day of Saint *Martin*, to satisfy *W. R.* Gentleman, of eighteen pounds nine shillings and one penny, parcel of a certain debt and damages, to wit, of a certain debt of forty pounds, which the said *W. R.* in our court before our justices at *Westminster* recovered against him, and of forty shillings which in our said court were

Testatum Ca.  
fa. for the re-  
fidus after a  
Fi. fa. in debt.

were adjudged to the said *W. R.* for his damages which he had by occasion of the detaining that debt whereof the said *W. G.* is convicted, of which said debt and damages twenty-three pounds ten shillings and eleven pence, other parcel, by virtue of our writ thereupon were lately made and levied of the goods and chattels of the said *W. G.* And whereupon our sheriff of *N.* sent to our justices at *Westminster* at a certain day now past, that the said *W. G.* is not found in his bailiwick, whereas it is testified in our said court, that the said *W. G.* lies hid, wanders and sculks in your county; And have there this writ. Witness, &c.

*Testatum.*

*Ca. sa. against  
Two where se-  
veral damages  
by inquiry in  
trespass and  
assault.*

*GEORGE* the Second, &c. To, &c. greeting. We command you, that you take *W. A.* late of, &c. and *W. S.* late of, &c. if they be found in your bailiwick, so that you may have their bodies before our justices at *Westminster*, on to wit, the said *W. A.* to satisfy *R. B.* of twenty pounds, and the said *W. S.* to satisfy the said *R. B.* of forty pounds, for his several damages which the said *R.* sustained by occasion of a certain assault, beating, wounding and ill treatment made on the said *R.* by the said *W.* and *W.* and against our peace with force and arms, at *B.* in your county, as is found by a certain inquisition of the country of your county taken between them; and also the said *W.* and *W.* to satisfy the said *R.* of seventeen pounds

pounds which were apjudged to the said R. in our said court, for his costs and charges which he sustained by occasion of the premisses; whereof they are convicted; And have there, &c.

To satisfy C. D. late of, &c. Esq; of nine pounds and ten shillings, which in our court before our justices at *Westminster*, by the discretion of the said justices according to the form of the statute in that case made and provided, were adjudged to the said C. for his costs and charges which he sustained, for that the said E. T. did not prosecute his writ by him the said E. obtained in our court against the said C. in a certain plea of debt upon demand for forty pounds, whereof the said E. is convicted; And there, &c.

*Upon a nonsuit in debt.*

If in case, say, — in a certain plea of trespass on the case.

In trespass, — in a certain plea of trespass.

In ejectment, — in a certain plea of trespass and ejectment of farm, *et sic de ceteris.*

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the sheriff of L. greeting. Attach L. R. Gentleman, one of the attornies of our court of the bench, otherwise called L. R. of, &c. so that you may have him before our justices at *Westminster* on *Wednesday* next

*A Testatum. Ca. fa. of privilege for an attorney against an attorney, in debt.*

Testatum.

next after three weeks of Saint *Michael*, to satisfy *J. S.* Gentleman, another attorney of our court of the bench, as well of a certain debt of sixty pounds, which the said *J.* in our court, before our justices at *Westminster* recovered against him, as of fourteen pounds and ten shillings which were adjudged to the said *J.* in our said court, for his damages which he had by occasion of the detaining that debt, whereof the said *L.* is convicted; And whereupon our sheriff of *M.* sent to our justices at *Westminster* at a certain day now past, that the said *L.* was not found in his bailiwick, whereas it was testified in our said court, that he lurks and secretes himself in your county; And have there this writ. Witness, &c.

*A Testatum*  
*Ca. fa. by a*  
*surviving pl.*  
*against an at-*  
*torney, in debt.*

*GEORGE* the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To the sheriffs of *N.* greeting. Attach *W. T.* Gentleman, one of the attornies of our court of the bench, otherwise called *W. T.* of, &c. so that you may have him before our justices at *Westminster* on next after to satisfy *V. D.* as well of a certain debt of five hundred pounds, which the said *V. D.* and one *T. J.* now deceased, in our court before our justices at *Westminster* recovered against him as of nine pounds which in our said court were adjudged to the said *V.* and *T.* for their damages which they had by occasion

caſion of the detaining that debt, whereof the ſaid *W.* is convicted; And whereupon *Sci. fa.* it is conſidered in our ſaid court, that he the ſaid *V.* have execution againſt the ſaid *W.* of the debt and damages aforeſaid, by the default of the ſaid *W.* And where-  
Testatum.  
 upon our ſheriffs of *London* ſent to our juſtices at *Westminſter* on a certain day now paſt, that the ſaid *W.* was not found in their bailiwick, whereas it is teſtified in our ſaid court, that the ſaid *W.* lurks and ſecretes himſelf in your county; And have there this writ. Witneſs, &c.

*GEORGE* the Second, by the Grace  
 of God, of *Great Britain, France and Ire-*  
*land* King, Defender of the Faith, &c. To  
 the ſheriff of *Surry*, greeting. Whereas  
 we lately commanded our ſheriff of *Mid-*  
*dleſex*, that he ſhould cauſe to be made of  
 the lands and chattels in his bailiwick of  
*T. S.* late of, &c. thirty-eight pounds; and  
 of the lands and chattels in his bailiwick  
 of *F. F.* late of, &c. other thirty-eight  
 pounds; and of the lands and chattels in  
 his bailiwick of *T. P.* late of, &c. other  
 thirty-eight pounds. Which ſaid ſeveral  
 ſums of thirty-eight pounds each of them  
 the ſaid *T. S. F.* and *T. P.* heretofore, to  
 wit, in the term of the Holy *Trinity* in  
 the            year of our reign, before Sir  
*Robert Eyre*, Knight, and his companions,  
 then our juſtices of the bench at *Westmin-*  
*ſter*, ſeverally acknowledged themſelves  
 to owe to *E. P.* and *W. F.* to be made of  
 their

Testatum Ca:  
*fa. againſt bail*  
*after Nulla*  
*Bona returned*  
*on a Fi. fa.*  
 Recital of Fi.  
*fa.*

their lands and chattels, and to the use and behoof of the said *E. P.* and *W. P.* to be levied; which said recognizance in that same term at *Westminster* aforesaid is inrolled, as by the said record and proceedings thereon in our same court before our said justices at *Westminster* aforesaid remaining manifestly appears; and that he should have that money before our said justices at *Westminster* from the day of *Easter* in fifteen days last past, to render to the said *E.* and *W.* for the several sums of money aforesaid, according to the form of the said recognizance whereof they are convicted; and whereupon it is considered in our said court, that the said *E.* and *W.* should have their execution against the aforesaid *T. S. F.* and *T. P.* of the said several sums of thirty-eight pounds by them in form aforesaid acknowledged, by the default of them the said *T. S. F.* and *T. P.* And whereupon our sheriff of *Middlesex* at that day sent to our said justices at *Westminster*, that the said *T. S. F.* and *T. P.* had not, nor had any one of them any lands or chattels in his bailiwick, whereof he was able to make the said several sums of 38*l.* 38*l.* and 38*l.* or any part thereof: We therefore command you, that you take the said *T. S. F.* and *T. P.* if they may be found in your bailiwick, and keep them safely, so that you may have their bodies before our justices at *Westminster* on the morrow of the Holy *Trinity*, to satisfy the aforesaid *E.* and *W.* of the said

2

several

*Return.*

several sums of thirty-eight pounds, according to the form of the said recognizance, whereof they are convicted; And whereupon our said sheriff of *Middlesex* sent *Testatum.* to our said justices at *Westminster* from the day of *Easter* in five weeks last past, that the aforesaid *T. S. P.* and *T. P.* were not, nor was any one of them found, in his bailiwick, whereas it is testified in our said court, that they lurk and secrete themselves in your county; And have there, &c.

*GEORGE* the Second, by the Grace *Testatum Ca.* of God, of *Great Britain, France and Ire-* *sa. against an* land King, Defender of the Faith, &c. To the sheriff of *D.* greeting. Whereas we *executor after* lately by our writ commanded our sheriff *a Devastavit,* of *M.* that of the goods and chattels in *and Nulla bona returned.* his bailiwick, which were of *S. V.* late of, &c. at the time of his death, in the hands of *V. C.* Gentleman, late of, &c. executor of the testament and last will of the said *S.* he should cause to be made, as well a certain debt of five hundred pounds, which *W. W.* in our court before our justices at *Westminster* recovered against the said *V. C.* as also eighteen pounds which in our said court were adjudged to the said *W.* for his damages which he had by occasion of the detaining that debt, if the said *V.* had so much in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *V.* and should have

have that money before our justices at *Westminster* on the morrow of the Purification of the Blessed *Mary* last past, to render to the said *W.* for his debt and damages aforesaid, whereof he is convicted; and our said sheriff of *M.* at that day sent to our said justices at *Westminster*, that the said *V. C.* had before the coming of the said writ sold and wasted diverse goods and chattels which were of the said *S. V.* at the time of his death, to the value of the debt and damages aforesaid, and had converted the money arising therefrom to his own proper use, so that he could not levy, or cause to be made the said debt and damages of the goods and chattels of the said *S. V.* And the said *V. C.* had no goods or chattels of his own proper goods and chattels in his bailiwick, whereof he could cause to be made the said damages, or any part thereof, as by that writ he was commanded; Therefore we command you, that you take the said *V. C.* if he may be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on the morrow of the Ascension of our Lord, to satisfy the said *W.* of the debt and damages aforesaid; And whereupon our sheriff of *M.* from the day of *Easter* in fifteen days last past sent to our justices at *Westminster*, that the said *V. C.* was not found in his bailiwick, whereas it is testified in our said court, that the said *V. C.* lurks and

Testatum.

and secretes himself in your county ; And have there this writ. Witness, &c.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the sheriff of N. greeting. Whereas by our writ we lately commanded you, that of the goods and chattels in your bailiwick, which were of W. P. of, &c. at the time of his death in the hands of W. G. late of, &c. executor of the testament and last will of the said W. P. you should cause to be made as well a certain debt of ninety pounds, which R. M. and M. his wife, in our court before our justices at Westminster recovered against him, as fourteen pounds which were adjudged to the said R. and M. in our said court for their damages which they had by occasion of the detaining that debt, if the said W. G. had so much of the goods and chattels which were of the said W. P. at the time of his death in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said W. G. and should have that money before our said justices at Westminster on the octave of the Purification of the Blessed Mary last past, to render to the said R. and M. for their debt and damages aforesaid, whereof the said W. G. is convicted; And whereupon our sheriff of S. heretofore sent to our said justices at Westminster, that the said W. G. had no

Ca. fa. sur  
Fi. fa. Ubi  
Vic. retorn.  
Devastavit sur  
Fi. fa. & In-  
quisit. capt.  
quod bona e-  
longat' fuer.  
Testatum Fi.  
fa.

Vol. I. Q goods

*Return damages levied de bonis propriis Execut. as to debt Nulla bona Testatoris.*

*Devastavit suggested.*

goods or chattels in his bailiwick whereof he could cause to be made the said debt and damages, or any parcel thereof; whereas it was testified in our said court, that the said *W. G.* had sufficient goods and chattels which were of the said *W. P.* in your bailiwick, whereof the said debt and damages, and every part thereof, might be caused to be made. And you at that day sent to our justices at *Westminster*, that by virtue of the said writ to you directed, you had caused to be made of the proper goods and chattels of the said *W. G.* the said fourteen pounds of damages aforesaid, and had the same ready at the said day and place before our said justices at *Westminster*, to render to the said *R.* and *M.* And that the said *W. G.* had not in your bailiwick any goods or chattels which were of the said *W. P.* at the time of his death, in his hands, whereof you could cause to be made the said debt, or any part thereof, as by the said writ you was commanded. And because the said return was conceived to be in delay of the said execution; and in our said court before our said justices at *Westminster* it appeared on the behalf of the said *R.* and *M.* that the said *W. G.* had sold diverse goods and chattels which were of the said *W. P.* at the time of his death in his hand to be administer'd, and the money received thereon to his own proper use had applied and disposed; and that the residue of the said goods and chattels which were of the said *W. P.* at the

the time of his death in the hands of the said *W. G.* to be administer'd, had been eloined to the intent that the said execution thereof might not be made; And we willing that those things, which in our said court before our said justices at *Westminster* have been rightly acted, should not be rendered void by art or deceit, com-  
 Fi. fa. fi, &c.  
 manded you by our writ, that of the goods and chattels in your bailiwic, which were of the said *W. P.* at the time on his death in the hands of the said *W. G.* to be administer'd, you should cause to be made the debt aforesaid, if it could be thereof levied, and have the money thereon levied before our said justices at *Westminster* from the day of the Holy *Trinity* in three weeks last past, to render to the said *R.* and *M.* for the debt aforesaid; and if it could not be thereof levied, then if it should appear to you by inquisition, on the oath of good and lawful men of your bailiwic in that behalf to be taken, or by  
 Si non, &c.  
 tunc si per In-  
 quisionem  
 constare pote-  
 rit quod def.  
 devast'.  
 any other manner whereby it might be better certified, that the said *W. G.* had sold, eloined or converted to his own use, goods and chattels which were of the said *W. P.* at the time of his death, in the hands of the said *W. G.* to be administer'd, to the value of the said debt, or any part thereof, That by good and lawful men of  
 Sci' fa.  
 your bailiwic you should make known to the said *W. G.* that he should be before our justices at *Westminster* at the said time, to shew if any thing he had for himself, or

Nulla bona  
and devastavit  
returned.

Ca. fa'.

knew to say why the said *R.* and *M.* ought not to have execution against him of the debt aforesaid, to be levied of the proper goods and chattels of the said *W. G.* if it should seem expedient, &c. And you at that day sent to our said justices at *Westminster*, that the said *W. G.* had not in your bailiwick any goods or chattels which were of the said *W. P.* at the time of his death, whereof you could cause to be made the said debt, or any parcel thereof, and that by *F. A.* and *R. R.* good and lawful men of your bailiwick, you had made known to the said *W. G.* that he should be before our said justices at *Westminster* at the day and place aforesaid, to shew in form aforesaid, and that by a certain inquisition taken before you, at on the day of last past, taken on the oath of twelve, &c. it was found that the said *W. G.* had sold, elained and converted to his own proper use, goods and chattels which were of the said *W. P.* to the value of the debt aforesaid; Therefore we command you, that you take the said *W. G.* if he may be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on the octave of Saint *Martin*, to satisfy the said *R.* and *M.* of the debt aforesaid, whereof he is convicted; And whereupon it is considered in our said court, that the said *R.* and *M.* have their execution against the said *W. G.* by the default

default of the said *W. G.* And have there,  
*Ec.* Witness, *Ec.*

*GEORGE* the Second, *Ec.* to the she-  
 riff of *K.* greeting. Whereas we lately  
 by our writ commanded you, that of the  
 goods and chattels in your bailiwick, which  
 were of *N. R.* deceased, at the time of  
 his death, being in the hands of *M. R.*  
 late of *N.* in your county, widow, execu-  
 trix of the testament and last will of the  
 said *N.* to be administer'd you should cause  
 to be made thirty-four pounds, which in  
 our court, before our justices at *Westminster*  
 were adjudged to *R. B.* for his damages  
 which he sustained by occasion of the not  
 performing certain promises and undertak-  
 ings made to the said *R.* by the said *N.*  
 in his life-time at *M.* in your county, if  
 the said *M.* had so much thereof in her  
 hands to be administer'd; and if she had  
 not, then fourteen pounds and ten shil-  
 lings of the damages aforesaid to be levied  
 of the proper goods and chattels of the  
 said *M.* and should have that money before  
 our justices at *Westminster* from the day  
 of the Holy *Trinity* in three weeks last  
 past, to render to the said *R.* for his da-  
 mages aforesaid, whereof she is convicted;  
 and you at that day sent to our said ju-  
 stices at *Westminster*, that the said *M.* had  
 no goods or chattels in your bailiwick which  
 were of the said *N.* at the time of his  
 death, whereof you could cause to be made  
 the said damages, or any penny thereof,

Q 3

nor

*Ca. fa. for da-  
 mages against  
 an executrix  
 after Nulla  
 bona propria  
 returned.*

nor any of her own proper goods or chattels in your said bailiwick, whereof you could cause to be made the said fourteen pounds and ten shillings of damages aforesaid, or any penny thereof; we therefore command you, that you take the said *M.* if she may be found in your bailiwick, and keep her safely, so that you may have her body before our justices at *Westminster* from the day of Saint *Michael* in three weeks, to satisfy the said *R.* of the said fourteen pounds and ten shillings of damages aforesaid; And have there this writ. Witness, &c.

Ca. Sa. in case  
at the suit of  
an executrix.

*GEORGE* the Second, &c. To the sheriffs of *London*, greeting. We command you, that you take *M. G.* late of *L.* widow, if she shall be found in your bailiwick, and her safely keep, so that you may have her body before our justices at *Westminster*

to satisfy *E. K.* executrix of the testament and last will of *G. K.* her late husband, deceased, of one hundred and seventeen pounds and ten shillings, which to the said *E.* in our court before our justices at *Westminster*, were adjudged for the damages of the said *G.* which he sustained by reason of not performing certain promises and undertakings made by the said *M.* to the said *G.* in his life-time at *L.* aforesaid in the parish of *St. Mary le Bow* in the ward of *Cheap*, whereof the said *M.* is convicted; And whereupon it was considered

Sci. Fa. on  
Stat. 8 & 9  
W. 3. c.

sidered in our same court, that the damages aforesaid by him the said G. sustained by occasion of not performing the promises and undertakings aforesaid, should be assessed and adjudged to the said E. according to the form of the statute in that case made and provided, by default. Witness, &c.

GEORGE the Second, by the Grace *A Fieri facias* of God, of Great Britain, France and Ire- *in debt.* land King, Defender of the Faith, &c. To the sheriff of *Lincoln*, greeting. We command you, that you cause to be made of the goods and chattels in your bailiwick of *B. C.* late of, &c. as well a certain debt of 20*l.* which *D. E.* in our court, before our justices at *Westminster* recover'd against him, as sixty shillings which were adjudged to the said *D.* in our said court, for his damages which he had by occasion of the detaining that debt; And have that money before our justices at *Westminster* on the morrow of the Ascension of our Lord, to render to the said *D.* for his debt and damages aforesaid, whereof the said *B.* is convicted; And have there this writ. Witness Sir *John Willes*, Knight, at *Westminster*, the day of, &c.

For varying the *Fieri facias* according to the nature of the action, the directions before given, fol. 214, 215. for making out the *Capias ad Satisfaciendum* will serve.

In a *Testatum fieri facias*, after the *Testatum Fi.* words [*whereof he is convicted*] say, and fa.

whereupon our sheriff of *N.* sent to our justices at a certain day now past, that the said *B.* has no goods or chattels in his bailiwick, whereof he could cause to be made or levied the said debt and damages, or any part thereof: Whereas it is testified in our said court, that the said *B.* has sufficient goods and chattels in your county whereof the said debt and damages may be caused to be made and levied; And have there this writ. Witness, &c.

*Fi. fa. against  
an administratrix.*

*GEORGE* the Second, &c. To, &c. greeting. We command you, that of the goods and chattels in your bailiwick, which were of *S. H.* deceased, at the time of his death, in the hands of *E. H.* late of, &c. widow, administratrix of the goods and chattels which were of the said *S. H.* to be administer'd, you cause to be made as well a certain debt of thirty pounds, which *R. F.* Gentleman, in our court before our justices at *Westminster* recovered against her, as ten pounds which in our said court were adjudged to the said *R.* for his damages which he had by occasion of the detaining that debt, if the said *E.* has so much goods and chattels which were of the aforesaid *S.* at the time of his death in her hands to be administer'd; and if she has not, then the damages aforesaid to be levied of the proper goods and chattels of the said *E.* And have that money before our justices at *Westminster* on the morrow of the Holy *Trinity*, to render to the said

said R. for the debt and damages aforesaid  
[if the action is not in debt, you only say  
for the damages aforesaid] whereof she is  
convicted; And have there this writ. Wit-  
ness, &c.

GEORGE the Second, &c. To, &c. <sup>Testatum Fi.</sup>  
greeting. We command you, that of the <sup>fa. after Sci.</sup>  
goods and chattels in your bailiwick of <sup>fa. in case on</sup>  
<sup>assumpsit upon</sup>  
J. M. late of, &c. and E. his wife, lately <sup>a recovery a-</sup>  
called, &c. you cause to be made twenty <sup>gainst the wife</sup>  
and five pounds and ten shillings which in <sup>while sole.</sup>  
our court, before our justices at *Westmin-*  
*ster* were adjudged to J. J. and R. R. for  
their damages which they sustained by oc-  
casion of the not performing certain pro-  
mises and undertakings to the said J. and  
R. by the said E. when she was sole, made  
at B. in the county of S. And have that  
money before our justices at *Westminster*  
from the day of the Holy Trinity in three  
weeks, to render to the said J. and R.  
for their damages aforesaid, whereof the  
said E. is convicted; And whereupon it <sup>Sci. fa.</sup>  
is considered in our said court, that the  
said J. and R. have their execution against  
the said J. M. and E. of the damages  
aforesaid, by the default of the said J. M.  
and E. And whereupon our sheriff of S. <sup>Testatum.</sup>  
at a certain day now past, sent to our ju-  
stices at *Westminster*, that the said J. M.  
and E. had no goods or chattels in his bai-  
liwick, whereof the said damages could be  
made, whereas it is testified in our said  
court, that the said J. M. and E. have  
sufficient

sufficient goods and chattels in your county, whereof the said damages may be made; And have there this writ. Witness, &c.

Fi. fa. on a judgment by a feme executrix while sole, whereupon execution is awarded on a Sci. fa. at the suit of the husband and wife.

GEORGE the Second, &c. To, &c. We command you, that of the goods and chattels of *W. C.* late of, &c. otherwise called, &c. in your bailiwick, you cause to be made as well a certain debt of one hundred and sixty pounds, which *E. W.* widow, executrix of the testament and last will of *S. W.* deceased, in our court, before our justices at *Westminster* recovered against him, as sixty shillings, which to the said *E.* in our said court were adjudged for her damages, which she had by occasion of the detaining that debt; And have that money before our justices at *Westminster* on the octave of the Purification of the Blessed Virgin *Mary*, to render to *R. W.* whom the said *E.* married after the said judgment was given, and to the said *E.* for the debt and damages aforesaid, whereof the said *W.* is convicted; And whereupon in our said court before our justices at *Westminster* it is considered that the said *R.* and *E.* have execution against the said *W.* of the debt and damages aforesaid, by the default of the said *W.* And have there this writ. Witness, &c.

Sci. fa.

A Fieri facias against bail after Sci. fa.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the

the Sheriff of *Middlesex*, greeting. We command you, that you cause to be made of the lands and chattels in your bailiwick, of *T. S.* late, &c. Gentleman, thirty-eight pounds; And of the lands and chattels in your bailiwick of *F. F.* late, &c. smith, other thirty-eight pounds; And of the lands and chattels in your bailiwick of *T. P.* late of, &c. other thirty-eight pounds. Which said several sums of thirty-eight pounds each of them the said *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the Holy *Trinity* in the year of our reign, before Sir *Robert Eyre*, Knight, and his companions, then our justices of the Bench at *Westminster*, severally acknowledged themselves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the use and behoof of the said *E. P.* and *W. F.* to be levied; which said recognizance in that same term at *Westminster* aforesaid is inrolled, as by the said record and proceedings thereon on our said court before our justices aforesaid remaining manifestly appears; And have that money before our justices at *Westminster* from the day of *Easter* in fifteen days, to render to the said *E.* and *W.* for the debt aforesaid, according to the form of the said recognizance, whereof they are convicted; And whereupon it is considered in our said court, that the said *E.* and *W.* have execution against the aforesaid *T. S. F.* and *T. P.* of the said several sums of thirty-eight

Sci. fa.

eight pounds by them in form aforesaid acknowledged, by the default of them the said *T. S. P.* and *T. P.* And have there this writ. Witness, &c.

*Award of Fi.  
fa. and conti-  
nuances.*

And hereupon the said [*plaintiff*] prays the writ of our lord the king to be directed to the sheriff of the county aforesaid, to levy the said hundred pounds of the goods and chattels of the said [*defendant*] for the damages aforesaid. And it is granted to him returnable here [*the return*] at which day comes here the said [*plaintiff*] by his attorney aforesaid. And the sheriff hath not sent the writ; Therefore let another writ be made to him in form aforesaid, &c. returnable here [*the return*] At which day [*ut supra.*]

*Fi. fa. in debt  
after Sci. fa.  
for executors  
on judgment re-  
covered by te-  
stator.*

*GEORGE* the Second, &c. To the sheriff of *B.* greeting. We command you that of the goods and chattels of *J. B.* late of *C. W.* in your county, innholder, otherwise called, &c. you cause to be levied as well a certain debt of 590*l.* which *J. D.* in our court before our justices at *Westminster* recovered against him, as 50*s.* which to the said *J. D.* in our said court were adjudged for his damages which he had sustained by reason of detaining that debt. And have you there that money before our justices at *Westminster* from the day of *St. Michael* in three weeks, to render to *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* for the debt and damages aforesaid. And where-

whereupon it is considered in our said court, the aforesaid *W.* and *T.* have execution against the said *J. B.* of the debt and damages aforesaid, by the default of the said *J. B.* whereof he is convicted; And have you there this writ. Witness, &c.

The first *Fieri facias* must be directed to the sheriff of the county where the action was laid; and on a return of *Nulla bona* you may have execution into any other county you shall think proper.

*GEORGE* the Second, &c. To, &c. Elegit in debt.  
greeting. Whereas *E. F.* lately in our court before our justices at *Westminster*, by the consideration of the said court, recovered against *B. C.* late of, &c. as well a certain debt of fifty pounds, as ten shillings, which in our said court were adjudged to the said *B.* for his damages which he had by occasion of the detaining that debt, whereof the said *B.* is convicted. The said *E.* afterwards came into our court, and by the statute in that case made and provided chose to have deliver'd to him all the goods and chattels of the said *B.* except his oxen and the beasts of his plow, and also a moiety of all his lands and tenements in your bailiwick, to hold to him the goods and chattels aforesaid, as his own proper goods and chattels; and also to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the said debt and damages

images shall be thereof levied; And thereof we command you, that all the said goods and chattels of the said *R.* except the oxen and beasts of his plow, and also a moiety of all his lands and tenements in your bailiwick, whereof the said *R.* on the octave of *St. Hilary* in the

year of our reign, on which day the said judgment was given, or at any time after, was seised, you cause to be delivered by a reasonable price and extent, to hold to him the said goods and chattels as his own proper goods and chattels; and to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the debt and damages aforesaid shall be thereof levied; And in what manner you shall execute this writ make appear to our justices at *Westminster*, from the day of *St. Michael* in three weeks, under your seal, and the seals of them, by whose oath you shall make the said extent and appraisement; And have there this writ. Witness, &c.

*Elegit in trespass.*

*GEORGE* the Second, &c. To, &c. greeting. Whereas *L. R.* lately in our court before our justices at *Westminster*, by the consideration of the said court, recovered against *H. H.* late of, &c. thirty-five pounds, which in our said court were adjudged to the said *L.* for his damages, which he had by occasion of a certain trespass done to the said *L.* by the said *H.* with force and arms and against our peace

at *W.* in your county, whereof the said *H.* is convicted. The said *L.* afterwards came into our court, &c. [*as before, using the word damages instead of debt and damages.*]

*GEORGE* the Second, &c. To, &c. Elegit after a greeting. Whereas lately in our court before our justices at *Westminster* it was considered, that *E. S.* have execution against *H. S.* late of, &c. otherwise called, &c. by the default of the said *H. S.* as well of a certain debt of twenty pounds, which the said *E.* in our court before our justices at *Westminster* recovered against the said *H.* of fifty shillings, which in our said court were adjudged to the said *E.* for his damages, which he had by occasion of detaining that debt, whereof the said *H.* is convicted. The said *E.* afterwards came, &c. as before. Sci. fa.

*GEORGE* the Second, &c. To, &c. Elegit after a greeting. Whereas by our writ we lately commanded our sheriffs of *London*, that of the goods and chattels in their bailiwick, which were of *H. B.* late of, &c. at the time of his death, in the hands of *R. B.* late of, &c. and *W. B.* late of, &c. executors of the testament and last will of the said *H. B.* to be administer'd, they should cause to be made a certain debt of two hundred pounds, which *W. S.* in our court before our justices at *Westminster* recovered against them, and ten pounds and nine shillings, which in our said court were adjudged to the said *W.* for his damages, which  
executors

which he had by occasion of the detaining that debt, to be levied of the said goods and chattels, if they had so much thereof in their hands to be administer'd; and if they had not, then the said damages to be levied of their own proper goods and chattels; And should have that money before our justices at *Westminster* in [the return] last past, to render to the said *W. S.* for the debt and damages aforesaid, whereof the said *R. B.* and *W. B.* are convicted. And the said sheriffs at that day sent to our said justices at *Westminster*, that the said *R. B.* and *W. B.* on the day of obtaining the original writ of the said *W. S.* to wit, on the                      day of                      *Et c.* had diverse goods and chattels which were of the said *H. B.* at the time of his death in their hands to be administer'd, to the value of two hundred pounds, whereof they could have satisfied the said *W. S.* for the debt aforesaid, as is found by a certain jury of the county, by our writ of *Nisi prius*, taken at the *Guildhall* of the city of *London* before Sir                      our chief justice of the bench, *S. M. Gent.* being associated to him, according to the form of the statute in that case made and provided; which said goods and chattels the said *R. B.* and *W. B.* had wasted and converted to their own use; by which they could not cause the debt and damages aforesaid, or any part thereof, to be made of the said goods and chattels. And further our said sheriffs of *London* then returned,

turned that the said *R. B.* and *W. B.* had not any goods or chattels in their bailiwick, whereof they could cause the damages aforesaid, or any part thereof, to be made, as by the said writ they were commanded; by which it was considered in our said court, that the said *W. S.* have execution against the said *R. B.* and *W. B.* of the debt and damages aforesaid, to be levied of the proper goods and chattels of the said *R. B.* and *W. B.* And the said *W. S.* afterwards came into our said court, and by the statute in that case made and provided chose to be delivered to him all the goods and chattels of the said *R. B.* and *W. B.* except their oxen and the beasts of their plow, and also a moiety of all their lands and tenements in your bailiwick, to hold the goods and chattels aforesaid as his own proper goods and chattels, and the moiety aforesaid as his freehold, to him and his assigns, according to the form of the said statute, until the said debt and damages shall be thereof levied. We therefore command you, that all the goods and chattels of the said *R. B.* and *W. B.* except their oxen and the beasts of their plow, and also a moiety of all their lands and tenements in your bailiwick whereof the said *R. B.* and *W. B.* on the octave of St. *Hilary* last past, or at any time since were seised, you cause to be delivered to the said *W. S.* by a reasonable price and extent, to hold the said goods and chattels to him as his own proper goods and chattels, and the said moiety

as his freehold, to him and his assigns, according to the form of the said statute, until the said debt and damages shall be thereof levied; And in what manner you shall execute this writ, &c. *ut antea*.

Officina Bre-  
vium, fol. 77.

Elegit on a  
judgment by  
Sci. fa. quare  
damna affide-  
ri non debent  
post mortem  
querentis  
port. per exe-  
cutricem.

Stat. 8 & 9  
W 3. c.

**GEORGE** the Second, &c. To the sheriff of *Berks*, greeting. Whereas *E. K.* executrix of the testament and last will of *G. K.* her late husband, deceased, lately in our court before our justices at *Westminster*, by the consideration of the same court, recovered against *M. G.* late of *London*, widow, one hundred and seventeen pounds and ten shillings, which in our same court before our justices at *Westminster* aforesaid, were adjudged to the said *E.* according to form of the statute in that case lately made and provided by the default of the said *M.* for the damages of the said *G.* which he had sustained by occasion of not performing certain promises and undertakings made by the said *M.* to the said *G.* in his life-time, whereof the said *M.* is convicted. And the said *E.* afterwards came into our same court, and by the statute in such case made and provided chose to have delivered to her all the goods and chattels of the said *M.* except the oxen and beasts of her plow. And likewise a moiety of all her lands and tenements in your bailiwick, to hold to her the said *E.* the goods and chattels aforesaid as her own proper goods and chattels. And also to hold the said moiety of the said lands

lands and tenements as her own freehold, to her the said *E.* and her assigns according to the form of the statute aforesaid, until she hath levied the damages aforesaid. And therefore we command you, that without delay you do deliver to the said *E.* by a reasonable price and extent, all the goods and chattels of the said *M.* except the oxen and beasts of her plow. And in like manner the moiety of all her lands and tenements in your bailiwick, of which the said *M.* was seised on the octave of Saint *Hilary* in the eleventh year of our reign, on which day judgment was thereof given, or at any time afterwards, to hold to her the said *E.* and her assigns according to the form of the statute aforesaid, until she shall have levied thereof the damages aforesaid. And in what manner you shall execute this our writ make manifest to our justices at *Westminster* aforesaid, from the day of Saint *Michael* in three weeks, under your seal, and the seals of those by whose oath you shall make the extent and appraisement thereof. And have you there this writ. Witness, &c.

A man may award on the roll *Elegits* May have several Elegits; into as many counties as he pleases, and execute all or any at his pleasure; but it is said, if he awards an *Elegit* into one county, extends the lands upon the writ, and afterwards files it, he is barred, and cannot sue out an *Elegit* into any other county.

Where by inquisition on an *Elegit* it is found that the plaintiff was seised of the lands at the time the judgment was given, upon an ejectment (which must be) brought to recover the possession, the plaintiff need only give in evidence the copy of the judgment, *Elegit* and inquisition thereupon filed, and is not bound to prove the party seised at the time of the judgment; and if he was not seised, it must be proved by the other side.

### *Of PROCEEDINGS for and against Attornies.*

**W**HERE an attorney is plaintiff, the first process is an attachment of privilege, which is in the following form:

*Attachment for  
an attorney.*

*Liber Intrat.*

220. k.

V. Stat. 13

Car. 2. Stat.

2. c. 2. f. 4.

**GEORGE** the Second, &c. To, &c. greeting. Attach *T. R.* so that you may have him before our justices at *Westminster* on *Saturday* next after three weeks from the day of *St. Michael*, to answer *S. B. Gent.* one of the attornies of our court of the bench, according to the liberties and privileges of the same court for such attornies and other ministers of the same bench from time out of mind used and approved in the same, of a plea of trespass [*as the action is.*] And have you there this writ. Witness Sir *John Willes*, Knight,



*Of appearing  
putting in bail  
thereto.*

If the attachment requires only a common appearance, a copy must be served with a notice, as in *fol. 65, 66.* and the appearance must be entered with the prothonotary who signed the writ, and if it requires bail, his clerk of the dockets prepares the bail-piece or recognizance, and attends a judge or the court, when the same is entered into, and the bail justify, or fresh bail is added, in the same manner as the filacer does on mesne process by original.

The declaration at the suit of an attorney begins in this manner:

Cooke.

*Easter Term in the Twelfth Year  
of the Reign of King George  
the Second.*

*Declaration by  
an attorney for  
fees and dis-  
bursements.*

Middlesex, *P. B.* late of, &c. was attached by a writ of our lord the king of privilege, issuing out of the court here to answer *L. R.* Gentleman, one of the attornies of the court of our lord the king of the bench here, according to the liberties and privileges of the same court, for such attornies and other ministers of the same bench time out of mind used and approved in the same, of a plea of trespass on the case, &c. And whereupon the said *L.* in his proper person complains, that whereas the said *P.* on the nineteenth day of *December* in the year of our Lord one thousand seven hundred

dred and thirty-eight, at the parish of St. Clement Danes in the county of *Middlesex*, was indebted to the said L. in thirty pounds of lawful money of *Great Britain*, for work and labour as an attorney and solicitor before that time done and performed by the said L. upon the retainer, and at the special instance and request, of the said P. in and about the prosecuting, defending and soliciting diverse causes, suits and businesses, and for money laid out, expended and paid by the said L. at the like special instance and request of the said P. in and about the prosecuting, defending and soliciting of those causes, suits and businesses, and for money due to the said L. for his fees due, and of right payable to him in that respect, and being so indebted, he the said P. in consideration thereof, afterwards, *to wit*, on the same day and year, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said L. that he the said P. would pay to the said L. the said sum of money when he should be thereunto requested. *And whereas the* *Quantum meruit ibidem.*  
said P. afterwards, *to wit*, on the same day and year, at the parish aforesaid in the county aforesaid, in consideration that the said L. upon the retainer of the said P. and at his special instance and request, had before that time done and performed other work and labour as an attorney and solicitor in and about other causes, suits and businesses, and laid out, expended and

R 4

paid

paid other money in and about the prosecuting, defending and soliciting of those causes, suits and businesses, undertook, and then and there faithfully promised the said *L.* that he the said *P.* would pay to the said *E.* so much money as he reasonably deserved to have for his last mentioned work and labour; and so much money as he had laid out, expended and paid in and about the prosecuting, defending and soliciting the said last mentioned causes, suits and businesses, and so much money as was due to the said *L.* for his fees due, and of right payable to him in that respect, when the said *P.* should be thereunto requested. And the said *L.* avers, that he reasonably deserved of the said *P.* for his said last mentioned work and labour, other thirty pounds of like lawful money, and that he had so laid out, expended and paid in and about the said prosecuting, defending and soliciting the said last mentioned causes, suits and businesses thirty pounds of like lawful money; and that twenty pounds of like lawful money were due to the said *L.* for his fees due, and of right payable to him in that respect, *to wit*, at the parish aforesaid in the county aforesaid, whereof the said *P.* then and there had notice. *And* *whereas also* the aforesaid *P.* afterwards, *to wit*, on the same day and year, at the parish aforesaid in the county aforesaid, was indebted to the said *L.* in fourteen pounds of like lawful money, for the like sum

Indeb. assump.  
for money laid  
out.

sum of money by the said *L.* at the like special instance and request of the said *P.* before that time expended, laid out, disbursed and paid, and being so indebted the said *P.* afterwards, *to wit*, on the same pay and year at the parish aforesaid in the county aforesaid, in consideration thereof undertook, and to the said *L.* then and there faithfully promised, that he the said *P.* the said fourteen pounds to the said *L.* when he should be thereunto required, would well and truly pay and content; *Yet* the said *P.* in no wise regarding his *Breach.* said several promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *L.* in this respect, hath not paid to the said *L.* the said several sums of money or any part thereof (altho' the said *P.* afterwards, *to wit*, on the thirtieth day of *December* in the same year, at the parish aforesaid in the county aforesaid, was requested by the said *L.* so to do) but has hitherto refused, and still does refuse to pay the same to the said *L.* to the damage of the said *L.* of thirty pounds; And thereupon he brings suit, &c.

Pledges of prosecuting { *John Doe,*  
  *Richard Roe.*

If an attorney be defendant, a bill must be prepared in the following form, according to the nature of the action.

Borret.

Borrett.

Of Easter Term in the Eighth Year  
of the Reign of King George  
the Second.

To the Justices of our Lord the  
King of the Bench.

*Bill against an attorney at the suit of an administrator.* Middlesex, **R.** R. Gentleman, administrator of all and singular the goods and chattels, and credits of **R. F.** clerk deceased, at the time of his death, who died intestate, by **J. C.** his attorney complains of **T. J.** Gentleman, one of the attornies of the court of our now lord the king of the bench here present here in court in his proper person, for that, whereas the said **T.** in the life-time of the said **R. F.** *Indeb assump. for money had and received in life time of intestate.* **to wit,** on the ninth day of April in the year of our Lord 1734. at *Westminster* in the county of *Middlesex* aforesaid, was indebted to the said **R. F.** in his life-time in 250*l.* of lawful money of *Great Britain*, for so much money by the said **T.** to the use of the said **R. F.** before that time had and received; and being so indebted the said **T.** afterwards, *to wit,* on the same day and year at *Westminster* aforesaid in the county aforesaid, in consideration thereof undertook, and then and there faithfully promised the said **R. F.** in his life, to pay him the said sum of money when he should be requested to pay the same; Yet the aforesaid **T.** not at all regarding

regarding his promise and undertaking a-<sup>Breach.</sup>fore-  
 said, but contriving and fraudulently  
 intending craftily and subtilly to deceive  
 and defraud the said R. F. in his life-time,  
 and the said R. R. since the death of the  
 said R. F. hath not yet paid the aforesaid  
 sum of money, or any part thereof, to  
 the said R. F. in his life-time, or to the  
 said R. R. since the death of the said R. F.  
 (to which said R. R. since the death of <sup>Administra-</sup>  
 the said R. F. <sup>tion committed.</sup>to wit, on the 16th day of  
 June in the year of our lord 1735. at West-  
 minster aforesaid in the county aforesaid,  
 administration of all and singular the goods,  
 chattels and credits which were the goods,  
 chattels and credits of the said R. F. at  
 the time of his death, by William, by  
 Divine Providence Archbishop of Canter-  
 bury, Primate of all England and Metro-  
 politan, was committed) altho' the afore-  
 said T. in the life-time of the said R. F.  
 by him the said R. F. and after the death  
 of him the said R. F. by the aforesaid R. R.  
 to wit, on the 17th day of June in the  
 year of our Lord 1735. aforesaid, at West-  
 minster aforesaid in the county aforesaid,  
 was required so to do; but he hath abso-  
 lutely refused to pay the same to the said  
 R. F. and since the death of the said R. F.  
 hath, and still doth refuse to pay the same  
 to the said R. R. to the damage of the said  
 R. R. of 300*l*. And thereupon he prays  
 relief, &c. And the said R. R. brings here <sup>Proferit.</sup>  
 into court the letters of administration a-  
 foresaid, to him as aforesaid granted, which  
 testify

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testify the granting of the administration  
aforesaid to the said R. R. in form afore-  
said, bearing date the day and year in that  
respect above-mentioned, and so forth.

Pledges of prosecuting, to wit,  $\left\{ \begin{array}{l} \text{John Doe,} \\ \text{and} \\ \text{Rich. Roe.} \end{array} \right.$   
Cooke.

*Hilary Term in the Fourteenth Year  
of the Reign of King George  
the Second.*

*To the Justices of our Lord the  
King of the Bench.*

*Bill against an  
attorney on a  
promise to de-  
liver back a  
gold watch, or  
pay 14 guineas  
for it, by a  
certain day.*

Middlesex, *J. T.* by *E. B.* his attorney  
to wit, *J.* complains of *J. H. Gent.*  
one of the attornies of the court of our  
now lord the king of the bench here pre-  
sent here in court in his proper person,  
for that on the 12th day of *November* in  
the year of our Lord 1739. at the parish  
of *St. Clement Danes* in the county of *Mid-*  
*dlesex*, in consideration that the said *J. T.*  
at the request of the said *J. H.* then and  
there delivered to the said *J. H.* a gold  
watch of the said *J. T.* and the said *J. H.*  
then and there received the same gold  
watch of the said *J. T.* he the said *J. H.*  
undertook, and then and there faithfully  
promised the said *J. T.* to deliver back the  
said gold watch to the said *J. T.* or to pay  
the sum of 14*l.* 14*s.* to the said *J. T.* for  
the said gold watch, on or before the first  
day

day of December then next ensuing; *Tet Breach.*

the said J. H. not regarding his said promise and undertaking, but devising and fraudulently intending to deceive and defraud the said J. T. in this behalf, hath not yet delivered back the said watch to the said J. T. nor paid him the said 14*l.* 14*s.* nor any part thereof, (although the said J. H. afterwards, *to wit*, on the first day of December in the year aforesaid, and often afterwards at the parish aforesaid in the county aforesaid, was requested by the said J. T. so to do) but hath hitherto refused, and still doth refuse so to do. *And*

whereas the said J. H. on the 3d day of June in the year of our Lord 1740. at the parish aforesaid in the county aforesaid, made his note in writing subscribed with his own hand, commonly called a promissory note, bearing date the same day and year last mentioned, by which note the said J. H. promised to pay to the said J. T. or his order, the sum of 3*l.* 5*s.* on demand, for value received; by reason whereof, and also by force of the statute in such cases made and provided, the said J. H. became liable to pay to the said J. T. the said 3*l.* 5*s.* according to the tenor and effect of the said note. *And* being so liable the said J. H. in consideration thereof, afterwards, *to wit*, on the day and year last mentioned, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said J. T. to pay him the said 3*l.* 5*s.* according

*On a promissory note drawn by deft. and payable to plt.*

Indeb. aff. for  
goods sold and  
delivered.

Quant. Val.  
thereon.

cording to the tenor and effect of the said note. *And also whereas* the said *J. H.* afterwards, *to wit*, on the 10th day of *January* in the year of our Lord 1740. at the parish aforesaid in the county aforesaid, was indebted to the said *J. T.* in the sum of 20*l.* of lawful money of *Great Britain*, for diverse goods, wares and merchandizes before that time sold and delivered by the said *J. T.* to the said *J. H.* at his request; and being so indebted the said *J. H.* in consideration thereof afterwards, *to wit*, on the day and year last above-mentioned, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *J. T.* to pay him the said 20*l.* when he the said *J. H.* should be thereunto requested. *And also whereas* afterwards, *to wit*, on the day and year last above mentioned, at the parish aforesaid in the county aforesaid, in consideration that the said *J. T.* had before that time sold and delivered diverse other goods, wares and merchandizes to the said *J. H.* at his request, he the said *J. H.* undertook, and then and there promised the said *J. T.* to pay him so much money for the said goods, wares and merchandizes last above mentioned, as the same at the time of the sale and delivery thereof were reasonably worth when he the said *J. H.* should be thereunto requested. And the said *J. T.* in fact saith, that the said goods, wares and merchandizes last above mentioned, were

at the time of the sale and delivery thereof reasonably worth other 20*l.* of like lawful money, *to wit*, at the parish aforesaid in the county aforesaid, whereof the said *J. H.* then and there had notice: *Breach.* *Nevertheless* the said *J. H.* not regarding his said three several promises and undertakings last above mentioned, but devising and fraudulently intending to deceive and defraud the said *J. T.* in this behalf, hath not yet paid the said several sums of money, in the said three last promises and undertakings mentioned, nor any part thereof, to the said *J. T.* (although the said *J. H.* afterwards, *to wit*, upon the same day and year, and often afterwards, at the parish aforesaid in the county aforesaid, was requested by the said *J. T.* so to do) but hath hitherto refused, and still doth refuse to pay him the same, to the damage of the said *J. T.* of 40*l.* And thereupon he prays relief, &c.

Pledges of prosecuting { *John Doe,*  
*Richard Roe.*

No bill shall be filed against an officer, attorney, clerk or minister of the court, to be called in court, in order to a fore-judger, until the bill be actually entered on record, and a number roll actually put to the bill. *Trin. 21 Car. 2.*

This

*Of filing a bill  
against an at-  
torney, and cal-  
ling him in  
court.*

*Note, get it  
stamp'd, &c.  
Note, paid in  
court 6d. for  
the rule.*

This rule is in a great measure disused. You ingross the bill on a piece of parchment stamped with a double penny stamp, which the prothonotary marks as entred, on being paid for the entry, and it is thereby supposed to be entered, tho' no number roll is put on the bill; then you carry the bill to *Westminster*, and give it to one of the criers, who calls the defendant in court, for which you pay him 1 s. After which you give a rule on the bill with the secondary for the defendant to appear, for which you pay 1 s. 4 d. viz. 1 s. for the king's duty, and 4 d. for the rule; and then you file the bill in the prothonotary's office, for which you pay 4 d. And heretofore it was not necessary to give the defendant any other notice of filing such bill against him than the calling him in court as aforesaid by the crier, which, as all attornies of the court were supposed to be personally present in court during the sitting thereof, was then thought to be sufficient notice. But many attornies having been struck off the roll on forejudgers for want of other notice; and many living in such remote parts of the kingdom, that it was impossible for them to have notice time enough to give order for their appearance before the rule (which was a four day rule) was expired, this practice is altered; and now,

*No forejudger  
till notice in  
writing.*

Where a bill shall be filed against an attorney of the court, no forejudger shall be entered for want of appearance, if the action

action be laid in *London* or *Middlesex*, and the attorney resides within 20 miles of *London*, until four days after notice in writing of filing such bill be given to such attorney or his agent, or left at his usual place of abode, and a rule given for such appearance as usual; and if such attorney resides above 20 miles from *London*, or the action be in any other county than *London* or *Middlesex*, no forejudger shall be entered till eight days after such notice shall be given in manner as aforesaid, and a rule to appear; the said days to be exclusive of the days of giving such notice. *Hil. 11 Geo. 2.*

*Common Pleas.*

*J. T.*

against

*J. H. Gent.* one of the attornies, &c.

Take notice, that a bill was this day filed in the office of *George Coake, Esq;* chief prothonotary of his majesty's court of *Common Pleas* at *Westminster*, against you the defendant *J. H.* at the suit of the plaintiff *J. T.* in an action of trespass upon the case on several promises; and unless you appear to the said bill on *Monday* the \* 26th day of *January* instant, you will be forejudged the court.

*Notice of a bill being filed.*

*E. B.*

23 Jan. 1740.

To *J. H. Deft.*

Attorney for the

Plt.

\* This is the day given by the secondary's rule which is inclusive; *sed vide Regul. Hil. 11 Geo. 2. supra*, which says the days are to be exclusive.

*Of forejudging  
an attorney.*

If the defendant appears, he enters his appearance with the prothonotary in whose office the bill was filed, and which is usually the office in which the defendant practices, if it be known. If the defendant does not appear, you enter the bill and a forejudger on the roll, in the following form, beginning with a memorandum, as in the *King's Bench*.

*Memorandum.*

Middlesex, *to wit*, Be it remembered, that on — the — day of — in this same term G. H. came here into court by L. R. his attorney, and exhibited to the justices of our now lord the king of the bench here his bill against J. B. Gent. one of the attornies of the court of our said now lord the king of the bench here present here in court in his proper person, in a plea of trespass on the case, the tenor of which said bill follows in these words; *to wit*, To the justices of our lord the king of the bench. *Middlesex*, *to wit*, G. H. by L. R. his attorney complains of J. B. Gentleman, &c. (*the whole bill to*) And thereupon he prays relief, &c. Pledges to prosecute *John Doe* and *Richard Roe*; Whereupon the said J. B. being solemnly called came not, therefore he stands forejudged from exercising his office of attorney of this court for his contumacy, &c.

*Forejudger.*

You pay the prothonotary 2 s. for signing the forejudger, and the clerk of the warrants 1 s. 4 d. for striking the defendant

dant off the roll, and then you may proceed against him as against a common person.

But if the defendant enters his appearance in time with the prothonotary, you deliver him a declaration and proceed, as in other cases; but the declaration and issue begin with a memorandum in the form aforesaid, and in both cases you add the pledges to prosecute at the end of the declaration. You must also make all your writs, as *Venire facias*, &c. returnable on a day certain, *prox. post* the general return day.

GEORGE the Second, &c. To the judges of our court of our palace at *West-* *A writ of privilege for an attorney sued in the palace*  
*minster*, and every of them, greeting. Whereas according to the custom of our court. court.  
court of the bench at *Westminster* hitherto used and approved in the same, the attornies of our said court of the bench ought not, nor have they for time past been used to be compelled to answer before any of our justices or officers, or any other secular judges whatsoever, except before our justices of our said court of the bench, upon any pleas, complaints or demands which do not particularly belong to us (pleas of freehold, felony and appeals excepted.) And we have lately received information of the great complaint of *A. B.* one of the attornies of our said court of the bench, that several ill-disposed persons intending to disquiet the said *A.* have im-  
S 2 pleaded

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pleaded him by diverse complaints levied in our court before you, which do not relate to us, whereby he is unable to attend his said office as an attorney upon several affairs and suits depending in our said court of the bench, which if it be permitted will manifestly take away, and be not only in derogation and diminution of the jurisdiction of our said court of the bench, and the liberties and privileges thereof, but also be to the great detriment of the said *A.* and his clients. And because we are willing that the jurisdiction, privileges and customs for so long time used and approved in our said court of the bench, should be inviolably observed, We command you and every of you, that you and every of you desist from proceeding in all and singular the complaints and pleas whatsoever depending in our said court before you, or any of you, against the said *A.* by whatsoever name he shall be therein reputed (pleas of freehold, felony and appeals only excepted.) And that you inform the said parties plaintiffs in the said complaints, that they may prosecute their said complaints before our justices of the said court of the bench, if they shall think it expedient so to do. Witness, &c.

*Another, where  
an attorney  
was arrested by  
Capias ad re-  
spondendum.  
Q. P.*

*GEORGE* the Second, &c. To the sheriffs of *London*, greeting. Whereas according to the custom of our court of the bench at *Westminster* hitherto used and approved of in the same, the attornies of our

our said court of the bench, whilst they are prosecuting and defending suits and actions therein for their clients, ought not nor have they for time immemorial been used to be compelled to answer before us, or any of our justices or officers, or any other secular judges whatsoever, upon any pleas, complaints or demands which do not particularly belong to us (pleas of freehold, felony and appeals excepted) save only before our justices of our said court of the bench, by bill exhibited in our said court, and not by original writ. And we have lately received information by the complaint of *A. B.* one of the attornies of our said court of the bench, prosecuting, following and defending suits and actions in our said court for his clients, that several ill-disposed persons, intending to disquiet the said *A. B.* have sued and prosecuted him by original writ or writs issued out of our High Court of *Chancery*, returnable before our said justices of the bench, and by writ or writs of *Capias ad respondendum* issued forth thereupon, and have caused him the said *A. B.* to be arrested and detained in your custody, by virtue of one or more of the said writs of *Capias ad respondendum*, in suits which do not relate to us, or in pleas of freehold, felony or appeals, whereby the said *A. B.* is unable to attend his said office as an attorney, upon the said several suits and actions depending in our said court of the bench, which if it is permitted, will

manifestly take away and be in derogation and diminution of the liberties and privileges of the said *A. B.* and to the great detriment of the said *A. B.* and his clients; And because we are willing that the jurisdiction, privileges and customs for so long time used and approved of in our said court of the bench, should be inviolably observed, We command you, that you desist from taking the said *A. B.* into your custody upon any of the said writs of *Capias ad respondendum*; and if the said *A. B.* be detained in your custody by any such writ or writs of *Capias ad respondendum*, and for no other cause, that then you supersede and suffer him to go at large, as you will answer the contrary at your peril; And that you inform the party or parties, plaintiff or plaintiffs in the suit or suits, that he, she or they may prosecute his, her or their said suits, before our justices of our said court of the bench, by bill or bills to be exhibited to the said justices against the said *A. B.* if he, she, or they think it expedient so to do. Witness, &c.

An attachment against an attorney or any other, for a contempt, is in this form:

*An attachment  
for a contempt.*

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Middlesex*, greeting. Attach *L. J.* Gentleman, one of the attorneys of  
our

our court of the bench [or A. B. any other person] so that you may have his body before our justices at *Westminster* on next after to answer us of and upon such things as on our behalf shall be then and there objected against him; And have there this writ. Witness, &c.

## Of Writs of Habeas Corpus cum Causa.

THEY are used for two purposes; *Writs of Habeas corpus cum causa.*  
*First*, To remove causes from inferior courts into this court, to be here determined. *Secondly*, To remove the body of a defendant out of any other prison into the prison of the *Fleet*.

As to the first, many abuses having been committed in the obtaining and prosecuting such writs, several laws have been made for remedying the same.

Before the statute of 43 *Eliz. c. 5.* it was usual for a defendant in an action commenced in an inferior court, to suffer such cause to be proceeded in till issue joined, the jury sworn, and evidence given for the plaintiff, before he would deliver into court his writ of *Habeas Corpus cum Causa*, or other writ which he had before sued out for removing the said cause into this or some other of the courts at *Westminster*; and this done merely to put the plaintiff to as much expence as possible, and to come at a knowledge of his evidence.

*Cause not to be removed by Habeas corpus, unless delivered before the jury sworn.* evidence. But by that statute it is enacted, That no writ of *Habeas Corpus*, or other writ for the removing a cause out of any inferior court, shall be received or allowed by the judge or officer to whom the same shall be delivered (but that he may proceed in such cause as if no such writ had been delivered to him) except the writ be delivered before the jury, which is to try the issue, have appeared, and one of them be sworn to try the cause.

*Not unless delivered before issue joined.* And by the statute 21 Jac. 1. c. 23. no writ of *Habeas Corpus*, *Certiorari*, or other writ to remove any action commenced within any city, liberty, &c. shall be allowed by the steward, judge, &c. of such court, unless delivered before issue or demurrer joined in such cause, so as the said issue or demurrer be not joined within six weeks after the arrest or appearance of the defendant to such action or suit.

*If carried back by Procedendo not to be removed again before judgment.* And if any action commenced in such court of record in any city, liberty, &c. shall be removed by any writ or process, and afterwards be remanded back by writ of *Procedendo*, or other writ, then the said action shall never afterwards be removed or stay'd before judgment, by any writ out of any court whatsoever.

*Cause not concerning freehold, and not exceeding 5l. not to be removed.* And if in any action or cause not concerning freehold inheritance, title of lands, lease or rent commenced in any such court of record, it shall appear or be laid in the declaration, that the debt, damages or thing

thing demanded doth not exceed 5 l. then such action shall not be stay'd by any writ whatsoever, other than writ of error or attainit.

But this act is only to extend to such courts of record in cities, liberties, &c. To what courts this extends. and for so long time only as there shall be an utter barrister of three years standing steward, &c. or judge, or recorder of such inferior court, or assistant to such judge of the same inferior court as shall not be an utter barrister of that standing, and not of counsel in any action in such inferior court.

The subtilty of ill-designing people in time got over, and rendered ineffectual this act. A vexatious defendant sued in an inferior court for a debt under 5 l. perhaps not 20 s. would set up a fictitious action against himself for a pretended demand of above 5 l. and then bring a *Habeas Corpus cum Causa*, which would take in both actions, and by this contrivance procure the smallest action to be removed into a superior court, whereby a plaintiff, that could not bear the expence of such superior court, has been necessitated to submit to the loss of his just demands.

But by an act made 12 Geo. 1. the judges of such inferior courts, as are described in the statute 21 J. 1. may proceed in such actions, &c. as are therein specified, which appear or are laid not to exceed 5 l. although there may be other actions Inferior courts may proceed in actions not exceeding 5 l. tho' there be other actions for above 5 l.

actions against such defendants wherein the plaintiffs demands shall exceed 5 l.

**Habeas Cor.**

A writ of *Habeas Corpus cum Causa ad faciendum & recipiendum*, directed to any sheriff (except of Lond. or Midd.) to be returnable on a day certain in term, must be made returnable immediately or in the vacation. *Mich. 1654.*

*If to the sher. of Lond. or Midd. may be returnable immediately.*

But such writ of *Habeas Corpus* directed to the sheriffs of *London*, or to the sheriff of *Middlesex*, may be granted in term or vacation returnable immediately. *Same Rule. Vide postea, fol. 269.*

*And the sheriff must return such writ the same day.*

Where a writ of *Habeas Corpus* made returnable immediately is directed to any sheriff, he ought to make his return the same day that the writ is delivered, and to bring the body immediately, as required by the writ. *Same Rule.*

*Prisoner charged with process out of this court, may be committed, tho' charged with process out of K.B. or Exc.*

*If charged with process out of this court, returnable at a day to come, may be committed.*

*Return of a H. C. must be at a day certain.*

If upon the return of the *Habeas Corpus*, the prisoner is returned charged with a process out of the *King's Bench* or *Exchequer*, and with process out of the *Common Pleas*, he may be committed with those causes. *Same Rule.*

And if the prisoner upon a *Habeas Corpus cum Causa* be returned charged with process out of the *Common Pleas*, though it be returnable at a future day, he may be committed with this cause. *Same Rule.*

All writs of *Habeas Corpus* returnable in court, must be made returnable at a day certain. *Mich. 1654. Hil. 13, 14 Car. 2.*

If

If a prisoner in custody of any sheriff <sup>of removing a</sup> or gaoler, charged with process issuing out <sup>prisoner into</sup> of the *King's Bench* or *Exchequer*, and not <sup>the Fleet,</sup> with any process out of this court, be minded to be turned over to the prison of the *Fleet*, he must procure himself to be charged with some process issuing out of the court of *Common Pleas* before he brings his writ of *Habeas Corpus*, that he may be returned charged therewith, otherwise he can't be turned over.

*The Form of the Writ of Habeas Corpus cum Causa.*

GEORGE the Second, &c. To the *A. H. C. to the* sheriff of *Middlesex*, greeting. We com- <sup>sheriff of Mid.</sup> mand you, that you have the body of <sup>ret. immedi-</sup> *T. M.* detained in our prison under your <sup>ately before a</sup> custody, as it is said, by whatsoever name <sup>judge.</sup> he is called in the same, together with the day and cause of the taking and detaining the said *T.* before Sir *John Willes*, Knight, our chief justice [or before Sir *John Fortescue Aland*, Knight, one of our justices] of the bench, at his chambers in *Serjeants Inn* in *Chancery Lane*, immediately after the receipt of this our writ, to do and receive what our said chief justice [or justice] shall then and there consider of him in this behalf; And have there this writ. Witness, &c.

*The*

*The Expences of this Writ, Allowance, &c. are.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Stamp duty	—	—	0 5 0
Judge signing	—	—	0 4 0
Prothonotary signing	—	—	0 1 4
Seal	—	—	0 0 7
To the sheriff of <i>Middlesex</i> for the allowance	—	—	0 4 8
For the return thereof, if but one writ	—	—	0 2 4
For every writ more against the defendant	—	—	0 2 4
For a warrant to the bailiff to conduct the prisoner before a judge, or into court	—	—	0 2 4
And if the defendant is in prison, then for a warrant to the gaol- er to deliver him to the bailiff	—	—	0 2 4
To the bailiff for bringing him up	0	10	0
Besides the fees at the judge's chambers, or in court.			

*A Hab. Corp.  
to the palace  
court.*

*GEORGE the Second, &c.* To the judges of our court of our palace at *Westminster*, and to every of them, greeting. We command you, that you have the body of *J. C.* detained in our prison under your custody, as it is said, by whatsoever name he may be called in the same, together with the day and cause of the taking and detaining the said *J. C.* before Sir *John Willes*, Knight, our chief justice of the bench, at his chambers situate in *Serjeants Inn* in *Chancery Lane*, immediately

ly after the receipt of this writ, to do and receive what our said chief justice shall then and there consider of him in this behalf; And have there this writ. Witnesses, &c.

*l. s. d.*  
The allowance at the marshal's }  
court for the first cause, is — } 0 4 8  
For every cause after the first — 0 1 0  
[If bailed] the stamp duty — 0 2 0  
Judge's clerk taking the bail — 0 7 6

Writs of *Habeas Corpus* directed to the inferior courts of London, Westminster and Southwark, and other courts within five miles of London, may be returnable immediately. *Mich. 1654. and Hil. 13 & 14 Car. 2. Vide antea, fol. 266.*

*Hab. Cor. to an inferior court within 5 miles of London may be ret. immediately.*

If bail be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*; and if on notice in writing given to the plaintiff, or his attorney, of the names and additions of the bail, the time when, and before whom put in, no exception be taken within twenty days, then the bail is to be delivered over to be filed. *Same Rules.*

*Bail taken in absence of plt. or his attorney, to be de bene esse; and if no exception within 20 days, to be filed.*

And if no exception be taken to bail put in on a *Habeas Corpus* before a judge at his chamber, then unless the bail be filed within four days after the expiration of the twenty days, a *Procedendo* may be granted, upon a certificate that the bail is not filed. *Same Rules.*

*If no exception, and bail not filed within 4 days after the 20, a Procedendo.*

Where

*Bail taken of prisoners to be delivered to prothonotary to be filed.*

*But prisoner not to be discharged 'till bail be assented to, &c.*

*Bail in all cases of removal where bail be-  
low, except.*

*Rule for Procedendo unless bail in 4 days in term, and in 6 days in vacation.*

*Rule for better bail.*

*Of justifying.*

Where bail is taken of a person in custody, the judge's clerk is to deliver the bail to the prothonotary, to be filed if assented to; and for that purpose the prothonotary's fees are to be deposited; but the prisoner is not to be discharged until the bail be assented unto, or the plaintiff over-ruled in open court to accept the same upon examination. *Same Rules.*

In all cases where bail was put in in the inferior court, if the cause be removed by *Habeas Corpus* into this court, bail must be put in here on the removal, tho' the debt be under 10*l.* except the defendant be an heir, executor or administrator, &c.

When the *Habeas Corpus* is allowed in the inferior court, and returnable before a judge at his chambers, the plaintiff's attorney must get an order from one of the judge's clerks for a *Procedendo*, unless the defendant put in bail by the time limited by the order, viz. in term-time within four days, and in vacation within six days after notice of the rule, a copy of which must be served on the defendant's attorney.

If the plaintiff's attorney dislike the bail, he serves the defendant's attorney with a like order for a *Procedendo*, unless better bail be put in within four days.

If this exception to the bail be in vacation-time, 'tis usual (though I don't see to what purpose) to justify within the four days before a judge at his chambers, for which you pay 2*s.* and then the bail must justify

justify the first day of the next term in court.

The defendant's attorney must give the like notice to the plaintiff's attorney of the putting in bail, and justifying, as in other cases.

If a cause be removed by *Habeas Corpus* out of the courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield* or *Pool*, or other counties where the judges of *Nisi Prius* seldom go, if the action be transitory, it must be laid in the county of *Kent*, *Southampton*, *Tork*, *Stafford* or *Dorset*, or other county where such city or town lies, and the recognizance is to be taken accordingly. *Mich. 1654.*

**GEORGE** the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the warden of our prison of the Fleet, greeting. We command you, that you have before our justices at *Westminster*, on *Wednesday* next after three weeks of the Holy Trinity, the body of *B. C.* late of *London*, Stationer, detained in our prison under your custody, as it is said, by whatsoever name he is called in the same, to satisfy *S. T.* of 30*l.* for his damages which he has sustained, as well by occasion of the not performing certain promises and undertakings lately made by the said *B.* to the said *S.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *B.* is convicted; and

*Causes removed from cities and towns where the judges seldom go, to be laid in the county wherein, &c.*  
*A Habeas Corpus ad Satisfaciendum to the Warden of the Fleet to bring a prisoner up to be charged in execution.*

and further to do and receive what our said court shall then and there consider of him in this behalf; And have there, &c.  
 Clift's Entr. 371.

You pay.

			<i>l.</i>	<i>s.</i>	<i>d.</i>
At the Fleet	—	—	0	9	4
In court to the secondary	—	—	0	9	0
Criers	—	—	0	2	0
Tipstaff bringing up the prisoner			0	10	0
If you draw up the rule you pay			0	2	6
the secondary more	—	—			
And at the Fleet	—	—	0	2	6

*A Habeas Corpus ad Satisfaciendum* may issue to the Warden of the Fleet, or the keeper of any inferior prison of a liberty or franchise, returnable in court at a day certain, and the number roll of the judgment to be indorsed upon the writ by the attorney who sues it out, and such writ shall be a good cause of detainer.  
*Mich. 1654.*

Habeas Corpus ad Satisfaciendum directed to the Marshal of the King's Bench.

GEORGE the Second, &c. To the Marshal of our *Marshalsea* before us, greeting. We command you, that you have before our justices at *Westminster*, on Friday next after fifteen days of Saint Martin, the body of *J. N. Esq;* in our prison, under your custody detained, as it is said, together with the day and cause of the taking and detaining him, by whatsoever name he is called in the same, to satisfy *L. M. widow*, of 120 *l.* which the said *J.* here-

heretofore, *to wit*, on the 7th day of *October* in the *10th* year of our reign before Sir Robert Eyre, Knt. late chief justice of our court of the Bench, at his chambers situate in *Serjeants Inn* in *Chancery Lane*, *London*, acknowledged to owe to the said L. to be levied of his lands and chattels, as by the said recognizance in our court of the Bench aforesaid remaining of record plainly appears. And whereupon it is con-Sci. fa.<sup>r</sup> sidered in our said court, that the said L. have execution against the said J. of the said 120 l. by the default of the said J. And whereupon our sheriff of *Middlesex* returned to our justices at *Westminster* from the day of Saint *Michael* in three weeks last past, that the said J. has no goods or chattels in his bailiwick, whereof he could cause to be made the said 120 l. or any part thereof; and further to do and receive what our said court shall then and there consider of him in this behalf; And have there this writ. Witness, &c.

GEORGE the Second, &c. To the Certiorari to mayor, aldermen and sheriffs of *London*, the Mayor, &c. and to each of them, greeting. We wil- of *London* in ejectment. ling for certain causes, that our justices at *Westminster* be certified as well of all and all manner of suits or complaints, bills, originals or pleas in our court before you or any of you, between R. R. plaintiff, and C. R. Gentleman, defendant, of a plea of trespass and ejectment of farm, as it is said, lately levied, affirmed or begun, or

now depending undetermined, as of all records and proceedings thereon depending, had or made, command you, and each of you, that the said suits or plaints, bills, originals or pleas aforesaid, as also all the records and proceedings aforesaid, with all things relating thereto, as fully and intirely as the same now remain before you, or any of you, by whatsoever names the parties are called in the same, you distinctly and openly have, together with this writ, before Sir \_\_\_\_\_ Knight, our chief justice of the bench, at his chamber situate in *Serjeants Inn* in *Chancery Lane*, *London*, immediately after the receipt of this our writ, that our said chief justice, the premisses being seen, may cause therein to be further done what he shall see ought of right to be done. Witness, &c.

Procedendo to  
the palace  
court on a Ha-  
beas Corpus.

**GEORGE** the Second, &c. To the judges of our court of our palace at *Westminster*, and to each of them, greeting. Whereas we by our writ lately commanded you, that you should have before Sir *John Willes*, Knight, our chief justice of the Bench, at his chamber situate in *Serjeants Inn* in *Chancery Lane*, *London*, immediately after the receipt of the said writ, the body of *R. W.* detained in our prison under your custody, as it is said, together with the day and cause of the taking and detaining him, by whatsoever name the said *R.* is called, to do and receive what our said chief justice should consider of him

him in that behalf; yet certain causes in this behalf specially moving our justices of the Bench aforesaid at *Westminster*, We command you, and each of you, that in all suits and complaints against the said R. at the suit of J. W. in our court before you moved or depending, you proceed with effect according to the law and custom of *England* and the court aforesaid, notwithstanding any writ lately directed to you to the contrary. Witness, &c.

GEORGE the Second, &c. To, &c. *The like in another form.*  
Whereas, &c. (*reciting the writ of Habeas Corpus*): We command you, that in all and singular pleas and complaints in our court before you, against the said L. moved or depending, you proceed with effect, notwithstanding our said writ of *Habeas Corpus* to the contrary lately thereupon directed to you. Witness.

GEORGE the Second, &c. To, &c. *On a writ of Habeas Corpus returnable in court.*  
Whereas we by our writ lately commanded you, that you should have before our justices at *Westminster*, on *Wednesday* next after fifteen days of *Saint Martin*, the body of C. H. detained in our prison under your custody, as it was said, by whatsoever name he was called, together with the day and cause of the taking and detaining the said G. to do and receive what our said justices should consider of him in this behalf; yet for certain causes in this behalf moving our said justices at *Westminster*,  
T 2

*minster, We command you, that in all and singular suits and plaints, &c. as before.*

As the *Habeas Corpus* removes all causes against the defendant in the inferior court, the *Procedendo* carries back all the causes that were removed.

## Of PRISONERS.

**A** Man having cause of action against a prisoner was formerly obliged to bring him into court by a *Habeas Corpus*, and then declare against him; but by the *Stat. 4 & 5 W. & M.* it is enacted, That if any person be taken or charged in custody at the suit of any other person, upon any writ or writs issuing out of any of the courts of *Westminster*, and imprisoned for want of sureties for his appearance, the plaintiff in such writ may, before the end of the next term after such writ shall be returnable, declare against such prisoner in the court out of which such writ or writs shall issue, whereupon such prisoner shall be taken or charged in custody, and may cause a true copy of the declaration to be delivered unto such prisoner, or to the gaoler or keeper of the prison in whose custody such prisoner shall be, to which declaration the said prisoner shall appear and plead; but if he shall not appear thereto, the plaintiff shall in such case have judgment,

*Where deft. is in custody for want of bail.*

*Plt. before end of next term after return of the writ may declare against such prisoner.*

*And have judgment in default of appearance and plea.*

ment, as if the prisoner had appeared and refused to plead.

No copy of a declaration shall be delivered to any prisoner until after the process upon which such prisoner shall be taken or charged in custody be returnable. *Declaration not to be delivered to prisoner till after the return of the writ.*  
Pas. 5 W. & M.

A prisoner in custody on an attachment for a contempt of the court cannot be charged with a declaration without leave of the court; and the charging a defendant with a *Capias ad Satisfaciendum*, whilst he was in custody of the sheriff of *Middlesex* on an attachment for a contempt of this court, has been held irregular. *Prisoner in custody for a contempt not to be charged with a declaration or execution, without leave.*

No rule shall be given for the defendant in custody to appear and plead to any declaration against him, until an affidavit be filed with the proper secondary of the delivery of the copy of such declaration, and of the time when, and the person to whom the said copy was delivered, and a copy of the said affidavit shall be produced to the prothonotary before judgment signed, together with a certificate from the proper officer, that no appearance is entered with him. *No rule to plead till affidavit of the delivery of the declaration.*  
Pas. 5 W. & M.

If a copy of a declaration be delivered before *Mensem Paschæ*, or *Crastinum Annularum*, and affidavit thereof made and filed, and the defendant doth not enter his appearance with the proper officer within ten days after *Easter* or *Michaelmas* term respectively, judgment may be entered against him upon such certificate, *Declaration delivered before Mens. Pas. or Crast. Anim. if deft. appears within 10 days after the end of the respective term, he may impart to the*

*Unless.*

if rules have been given ; but if he does enter his appearance as aforesaid within ten days after such term, he shall imparl until the next term, unless the action be in *London* or *Middlesex*, and the defendant be in prison within forty miles of the cities of *London* or *Westminster* ; and then tho' the prisoner doth appear within ten days after the end of the term, he shall plead two days before the effoin-day of the next term ; and in default thereof, rules having been given, judgment may be entered against him as aforesaid. *Same Rule.*

*If the declaration be delivered on or after Mens. Pas. or Crast. Anim. or in Hil. or Trin. term, and deft. appears 2 days before the effoin-day of the next term, he may imparl to the next term.*

If the copy of the declaration be delivered on or after *Mens. Pas.* in *Easter* term, or *Crastinum Animarum* in *Michaelmas* term, or in *Hilary* term, or in *Trinity*, and the plaintiff shall thereupon give a rule to appear and plead, if the defendant enters his appearance two days preceding the effoin-day of the next term, he shall imparl until the next term ; but if he shall not appear within that time judgment may be entered against him, as aforesaid. *Same Rule.*

*If declaration delivered before effoin-day of the 2d term, deft. to plead without imparlance.*

If the writ be returnable in one term, and a copy of the declaration be delivered before the effoin-day of the next term, the plaintiff in such declaration may give a rule to appear and plead ; and if the defendant doth not enter his appearance and plead by that time the rules are out, judgment may be entered against him. *Same Rule.*

If

If the declaration be not entered or left *If no declaration before the end of the 2d term, and affidavit filed, &c. deft. to be discharged by Superfedeas.* in the office before the end of the next term after the return of the writ or process, (by which the defendant shall be taken or charged in custody) and an affidavit made and filed in manner aforesaid before the end of twenty days after such term, (*Easter term excepted, and within ten days after Easter term*) the prisoner shall be discharged, upon entering his appearance with the proper officer, by writ of *Superfedeas* made by him, according to the antient practice of this court. *Same Rule.*

If any gaoler or keeper of any prison, *Gaoler concealing a declaration liable to an attachment.* having received a copy of a declaration against any prisoner in his custody, shall suppress the same, or not deliver it forthwith to such prisoner, an attachment shall be entered against him. *Same Rule.*

It shall be lawful for any person who shall have cause of action against any prisoner of the *Fleet*, after filing or entering a declaration, to deliver a copy to such defendant in any personal action, or to the turnkey or porter of the *Fleet* prison; and after a rule given to plead to be out at eight days at most, after delivery of such copy of the declaration, and affidavit made of such delivery, to sign judgment against such defendant, as if he had been charged at the bar of the *Common Pleas*. *Stat. 8 & 9 W. 3. c. 27. §. 13.* *Of declaring against a prisoner in the Fleet. Eight days time to plead.*

## Common Pleas.

E. T.  
against

W. W. late of, &c.

} In a plea of  
trespass on  
the case.

*Affidavit of the  
delivery of a  
declaration against a pri-  
soner.*

R. R. of, &c. Gent. maketh oath, That he this deponent on the 12th day of February last, at the lodge of the Fleet prison, delivered a declaration in this cause to W. Manning, one of the turnkeys of the said prison, a true copy of which declaration is hereunto annexed. And this deponent also saith, That the said W. Manning did then acknowledge to this deponent, that the defendant W. W. was at that time a prisoner in the said prison of the Fleet.

Sworn, &c.

R. R.

*When decl. to  
be enter'd with  
protb. before  
delivered.*

When the defendant is in the Fleet, the declaration must be entered with the prothonotary before it be delivered to the defendant, but need not be entered before the delivery when the defendant is in any other prison.

*In an action on  
a joint bond  
where one deft.  
could not be ar-  
rested, time to  
declare denied.*

In an action of debt against two obligors on a joint bond conditioned for payment of money, one of the defendants was arrested, and continued in custody for want of bail, the other obligor could not be arrested, and now two terms being near expired, the plaintiff moved the court for time to declare, in regard the defendant in custody would be discharged for want of being declared against this term,  
and

and the other defendant could not be outlawed by that time. But the motion was denied. *Fisher v. Tucker & al. Hil. 2 Geo. 2.*

If any plaintiff shall declare against any defendant in custody of the warden of the Fleet, or of any sheriff or other officer, by virtue of any process of this court, and shall not further proceed to judgment in three terms after such declaration delivered inclusive of the term in which the declaration shall be delivered, the defendant having appeared, the defendant may be discharged out of custody by *Superse- deas*, to be allowed by one of the justices of this court, if cause shall not be shewn by the plaintiff or his attorney, why such plaintiff had not proceeded before that time to judgment as aforesaid, upon notice to be given to either of them by the defendant's attorney or agent, and oath made of such notice. *Pas. 8 Geo. 1.*

And in case any plaintiff having obtained judgment in this court against any defendant a prisoner, as aforesaid, shall not charge such defendant, so remaining a prisoner, in execution upon the judgment so obtained, within two terms next after such judgment so had and obtained, including the term in which the said judgment shall be signed, such defendant so remaining in prison may be discharged out of custody, where he shall be so detained, by *Superse- deas*, to be allowed as aforesaid, unless cause shewn on like notice and oath. *Same Rule.*

If

*Def. surrendering in discharge of his bail before declaration delivered, to be declared against within 2 terms, or discharged.*

If any defendant shall render himself, or be rendered to the *Fleet* prison, in discharge of his bail, at the suit of any plaintiff, where no declaration has been delivered, unless the plaintiff shall declare against such defendant within two terms after such render, such defendant may be discharged out of custody, by *Supersedeas* to be allowed by one of the justices of this court, if cause be not shewn to the contrary by the plaintiff, or his attorney, upon notice to either of them given by the defendant's attorney or agent, and affidavit made of such notice. *Same Rule.*

*If declaration delivered, or judgment had before render, pls. to proceed to judgment in 3 terms after render, and charge deft. in execution within 2 terms after judgment, or deft. to be discharged.*

But where a declaration has been delivered, or judgment had against such defendant so rendering himself, or being rendered, before such render, unless the plaintiff shall proceed to judgment upon such declaration delivered within three terms after such render (the defendant having appeared) and charge such defendant in execution within two terms after such judgment obtained, the defendant may be discharged in like manner by *Supersedeas*, unless cause shewn upon the like notice and affidavit. *Same Rule.*

*Copy of declaration not sufficient to charge prisoner in custody, unless affidavit be made that cause of action is 10l. or upwards.*

No copy of a declaration delivered at the *Fleet* prison against any prisoner there, shall be sufficient charge to hold such prisoner to bail, or to retain such prisoner in custody for want of bail, unless an affidavit that the plaintiff's cause of action amounts to ten pounds or upwards be first made and filed in the proper prothonotary's

ry's office, and an indorsement made by the said prothonotary or his deputy upon such copy of a declaration, signifying the sum of money specified in such affidavit, for which sum so indorsed bail shall be required, and no more. *Hil. 8 Geo. 2.*

If a defendant arrested by process issuing out of the court of *King's Bench*, and in custody for want of bail, remove himself by *Habeas Corpus* to the *Fleet* prison, and the plaintiff charges him in the *Fleet* with a copy of a declaration, he is not obliged to make and annex an affidavit, as by the above rule is directed, in regard there was an affidavit made of the debt when the plaintiff took out the process upon which the defendant was arrested; but if the declaration comes in as a new charge against a prisoner in custody, at the suit of another plaintiff, there the above rule must be observed.

Where a prisoner in the *Fleet*, or other gaol or prison, is discharged, or ordered to be discharged by this court, or any of the justices thereof by *Superseas* for want of prosecution, and such prisoner is afterwards arrested or detained in custody by action of debt brought upon the judgment obtained in the cause, wherein such prisoner was so discharged, or ordered to be discharged, a common appearance shall be accepted for the defendant, in such action of debt upon the judgment. *Hil. 8 Geo. 2. Vide antea fol. 62.*

*The plt. at whose suit the prisoner was arrested need not make such affidavit.*

*A prisoner discharged for want of prosecution, if afterwards arrested on an action on the judgment, a common appearance shall be taken.*

Where

*Def. discharged for want of proceeding to judgment may be afterwards taken in execution; aliter if discharged for want of being charged in execution.*

Where a defendant is discharged out of custody for want of the plaintiff's proceeding to judgment, the plaintiff may afterwards proceed to judgment and take the defendant in execution thereon, and the defendant shall not be discharged; but if the plaintiff has proceeded to judgment, and the defendant be discharged out of custody for want of being charged in execution, the defendant is totally discharged, and cannot afterwards be taken in execution on that judgment.

*A prisoner on contempt not entitled to a day rule.*

A prisoner charged with an attachment for a contempt, which is a criminal prosecution, is not intitled to a day rule.

*Superedeas on putting in good bail.*

GEORGE the Second, &c. To the sheriff of L. greeting. Whereas S. S. is detained in our prison under your custody, by virtue of our writ returnable, before our justices at Westminster, on, &c. [the return] to answer C. C. in a plea of trespass, and also in a plea of trespass on the case, to the damage of the said C. of 20 l. And because it sufficiently appears to our said justices at Westminster, that the said S. has appeared in our said court, and found sufficient bail to answer the said C. in the plea of trespass on the case aforesaid; Therefore we command you, that if the said S. is detained in our said prison under your custody, by occasion of the said action, and no other, then you permit him to

to go at large, as you will answer the contrary at your peril. Witness, &c.

GEORGE the Second, &c. To

chief steward of the liberty of *The like to a*  
*Bury St. Edmunds* in the county of *Suffolk*, *steward of a*  
greeting. Whereas by our writ we com- *liberty.*  
manded our sheriff of *Suffolk*, that he should  
take *J. L. Gent.* if he might be found in  
his bailiwick, and keep him safely, so that  
he might have his body before our justices  
at *Westminster*, at a certain day in the said  
writ specified, to answer *W. L. Gent.* in a  
plea of trespass, and also in a certain plea  
of trespass on the case upon promise, to  
the damage of the said *W.* of 300*l.* and  
you, by virtue of a certain warrant upon  
our said writ by the sheriff of the county  
aforesaid thereupon directed to you, took  
the said *J.* within the said liberty, and still  
detain him in our prison under your cus-  
tody; *Yet* because the said *J.* after the  
taking aforesaid found sufficient bail be-  
fore our said justices at *Westminster*, to an-  
swer the said *W.* in the pleas aforesaid;  
Therefore we command you, that if the  
said *J.* by the occasion aforesaid, and no  
other, is detained in our prison under your  
custody, then without delay you cause the  
said *J.* to be discharged out of the said  
prison, and permit him to go at large.  
Witness, &c.

GEORGE

Superfedeas on  
entering a com-  
mon appear-  
ance.

GEORGE the Second, &c. To the sheriff of *W.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *Capias* issued out of our court before our justices at *Westminster*, returnable before our said justices, on, &c. [the return] to answer *C. D.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *C.* 30*l.* whereby 20*l.* bail was directed to be taken: But because it sufficiently appears to our said justices at *Westminster*, that the said *A.* has appeared by *W. R.* his attorney to answer the said *C.* in the plea aforesaid, We command you, that if the said *A.* be detained in our prison under your custody, by virtue of the said writ, and for no other cause, that then you suffer him to go at large, as you will answer the contrary at your peril. Witness, &c.

Superfedeas  
for want of  
prosecution,  
where the  
def. was ta-  
ken by the late  
sheriff.

GEORGE the Second, &c. To the sheriff of the city of *Canterbury*, greeting. Whereas by our writ we commanded our late sheriff of the city of *Canterbury*, That he should take *J. L.* if he should be found in his bailiwick, and keep him safely, so that he might have his body before our justices at *Westminster*, from the day of *St. Michael* in three weeks in the first year of our reign, to answer *J. A.* in a plea of trespass, and also for 16*l.* of debt upon demand; and the said *J. L.* by virtue of our

our said writ was taken, and is now detained in our prison under your custody; *Yet* because the said *J. A.* has in no manner hitherto proceeded in the said pleas against the said *J. L.* and the said *J. L.* has by *L. R.* his attorney appeared in our court before our justices at *Westminster*, and is ready to answer the said *J. A.* in the pleas aforesaid, We therefore command you, that if the said *J. L.* by the occasion aforesaid, and no other, is detained in our prison under your custody, then without delay you cause the said *J. L.* to be discharged out of the said prison, and permit him to go at large. Witness, &c.

**GEORGE** the Second, &c. To the <sup>Superfedeas</sup> sheriff of *W.* greeting. Whereas *A. B.* is <sup>for want of</sup> detained in our prison under your custody, by virtue of our writ of *Capias*, <sup>declaring in</sup> returnable before our justices at *Westminster*, on, &c. <sup>two causes.</sup> [*the return*] to answer *C. D.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *C.* 30*l.* whereupon bail for 20*l.* was directed to be taken: And whereas the said *A.* is also detained in our said prison under your custody by virtue of another writ of *Capias*, returnable before our said justices at *Westminster*, on, &c. [*the return*] to answer *E. F.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *E.* of 50*l.* whereupon bail for 40*l.* was directed to be taken:

taken: But because it sufficiently appears to our said justices at *Westminster*, that the said *A.* hath appeared in our court before our said justices by *W. R.* his attorney, to answer as well the said *C.* as the said *E.* in the several pleas aforesaid; And that the said *C.* and *E.* or either of them have or hath not proceeded to declare against the said *A.* in due time after his commitment, pursuant to the rules of our court of *Common Pleas* at *Westminster*; We therefore command you, that if the said *A.* be detained in our prison under your custody for the causes aforesaid, and no other, that then you immediately discharge him from your said custody, and suffer him to go at large, as you will answer the contrary at your peril. Witness, &c.

*Superfedeas for want of an affidavit of the debt and indorsement on the back of the decl. where- with debt. was charged in the Fleet.* **GEORGE** the Second, &c. To the Warden of our prison of the *Fleet*, greeting. Whereas *J. G.* in the term of the Holy Trinity last past [*if delivered in the vacation, insert the day*] was charged in our said prison under your custody with a copy of a declaration, at the suit of *T. B.* in an action of debt upon bond for the sum of

But because it sufficiently appears to our justices at *Westminster*, that no affidavit that the said plaintiff's cause of action amounted to 10*l.* or upwards, was first made and filed in the proper prothonotary's office, nor an indorsement made by the said prothonotary or his deputy upon such copy of the declaration,

ration, signifying the sum of money which should have been specified in such affidavit, according to the late rule made for that purpose; And because the said *J.* hath appeared by his lawful attorney to answer the said *T.* in the plea aforesaid, We command you, that if the said *J.* be detained in our said prison under your custody, by virtue of the said declaration, and for no other cause, that then you suffer him to go at large, as you will answer the contrary at your peril. Witness Sir *John Willes*, Knight, at *Westminster*, the 23d day of *October* in the 13th year of our reign.

*GEORGE* the Second, &c. To the Sheriff of *S.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *Capias*, returnable before our justices at *Westminster*, on, &c. [the return] last past, to answer *C. D.* in a plea of trespass; and also in a certain plea of debt upon demand for 40*l.* And whereas the said *A.* afterwards, that is to say, on the 17th day of *May* last past, was charged with a declaration at the suit of the said *C.* in the plea aforesaid; But because it appears to our justices at *Westminster*, that the said *A.* hath appeared in our court of *Common Pleas*, to answer the said *C.* in the plea of debt aforesaid, and that the said *C.* hath not proceeded to judgment against the said *A.* within three terms after the delivery of the said de-  
Superedeas  
for want of  
plt.'s proceeding  
to judgment  
within three  
terms after de-  
claration de-  
livered.

claration, as required by the rules of our said court, We command you, that if the said *A.* be detained in our prison under your custody, for the cause aforesaid, and no other, you permit him to go at large, as you will answer the contrary at your peril. Witness, &c.

Superfedeas  
for not charging  
def. in  
execution with-  
in 2 terms af-  
ter judgment.

*GEORGE* the Second, &c. To the Warden of our prison of the *Fleet*, greeting. Whereas *M. D.* on the 21st day of *June* 1739. rendered herself to our said prison of the *Fleet* before *William Fortescue*, Esq; one of our justices of our court of the Bench in discharge of her bail, at the suit of *U. R.* and *H. C.* for 40*l.* And because the said *U.* and *H.* have not proceeded to charge the said *M.* in execution within two terms next after judgment obtained, according to the rules of our said court of the Bench, We therefore command you, that if the said *M.* be detained in your custody for that, and no other cause, that then you suffer her to go at large, as you will answer the contrary at your peril. Witness, &c.

Superfedeas  
for want of  
proceeding to  
judgment and  
execution at  
the suit of se-  
veral pls.

*GEORGE* the Second, &c. To the Warden of our prison of the *Fleet*, greeting. Whereas it hath been certified to our justices of our court of the Bench at *Westminster*, that *A. B.* was committed to our said prison of the *Fleet* for want of bail, upon our writ of *Habeas Corpus*, at the suit of *C. D.* in a plea of trespass, and also

also in a certain plea of debt upon demand for 45*l.* And on the 27th of *May* 1735. was charged with a declaration at the suit of *E. F.* in a plea of trespass on the case for 50*l.* And on the 30th day of the same month was charged with a declaration at the suit of the said *C.* in a plea of debt for 40*l.* And also on the 13th day of *June* then next following was charged with another declaration at the suit of *G. H.* in a plea of trespass on the case for 20*l.* And for that it appeareth to our said justices, that the said *C.* and *E.* or either of them, have not proceeded to charge the said *A.* in execution in due time in the said causes or either of them, according to the rules and orders of our said court; And also, for that it appeareth to our said justices that the said *G.* hath not in due time proceeded to judgment against the said *A.* in the said cause, according to the rules and orders of our said court; And because the said *A.* hath appeared in our said court by his lawful attorney in the several actions aforesaid; Therefore, &c.

*Proceedings in Ejectment.*

**A**N action of trespass and ejectment is *An action of* given to a tenant for term of years, *trespass and* who is ousted of his term, and he may *ejectment,* thereby recover the remainder of his term *what it is.* and damages. It is now used as the most

common action for trying titles to land in the room of many real actions.

This action is generally grounded on a mere fiction. The person who claims the messuages or lands in dispute, and who is called the lessor of the plaintiff, is supposed to have made a lease of the premises to the plaintiff for a term of years yet in being, the plaintiff is supposed to have entered by virtue of that lease, and the defendant, who is termed the casual ejector, (being only a nominal person) is supposed to have entered upon the plaintiff and turned him out of possession.

*Of commencing this action.*

The common method of commencing this action is by delivering a copy of the declaration to the tenant in possession of the premises, with a notice thereunder written to appear and defend his title, or else that the defendant, the casual ejector, will suffer judgment to go by default, and thereby the tenant be put out of possession.

*The tenant in possession may be admitted to defend his title, on entering into the common rule.*

The tenant in possession may be admitted to defend his title on entering into the common rule, viz. to become defendant in the room of the defendant the casual ejector, receive a declaration, plead the general issue, and at the trial to confess the lease, entry and actual ejectment of the plaintiff.

Thomson.

Thomson.

*Trinity Term in the Seventh Year  
of King George the Second.*

Middlesex, **JOHN Doe**, late of the parish *Declaration in*  
to wit, **of St. George the Martyr** *ejection of*  
in the county of *Middlesex*, yeoman, was *five messuages.*  
attached to answer *Richard Roe* of a plea,  
wherefore with force and arms he entered  
into five messuages with the appurtenances  
in the parish of *Stebon-Heath*, otherwise  
*Stepney*, in the county of *Middlesex*, which  
*Thomas Bland* and *Conrade de Golls* demised  
to the said *Richard* for a term which is not  
yet expired, and ejected him from his said  
farm, and other wrongs to him did, to  
the great damage of the said *Richard*, and  
against the peace of our sovereign lord the  
king; And whereupon the said *Richard*  
by *Joseph Dobbins* his attorney complains,  
That whereas the said *Thomas* and *Conrade*  
on the 25th day of *April* in the 6th year  
of the reign of his said majesty, at the  
said parish of *Stebon-Heath*, otherwise  
*Stepney*, in the county aforesaid, had de-  
mised to the said *Richard* the said tene-  
ments with the appurtenances; To have  
and to hold the said tenements with the  
appurtenances to the said *Richard* and his  
assigns, from the 24th day of *April* afore-  
said in the year aforesaid, unto the full  
end and term of five years thence next  
ensuing and fully to be complete and end-  
ed; by virtue of which demise the said

*Richard* entered into the said tenements with the appurtenances, and was possessed thereof; And the said *Richard* being so possessed thereof, the said *John* afterwards, to wit, on the said 25th day of *April* in the said 6th year, with force and arms, &c. entered into the said tenements with the appurtenances which the said *Thomas* and *Conrade* had demised to the said *Richard* in form aforesaid, for a term which is not expired, and ejected the said *Richard* from his said farm, and other wrongs, &c. to the great damage, &c. and against the peace, &c. whereupon the said *Richard* saith, that he is injured, and hath damage to the value of 20*l.* And thereupon he brings suit, &c.

*The notice.*

Mr. *John Wilkinson*, I am informed that you are in possession of, or claim title to, the premises in this declaration mentioned, or to some part thereof; And I being sued in this action as a casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of the next *Michaelmas* term in his majesty's court of *Common Pleas* at *Westminster*, by some attorney of that court, and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. I am Your humble Servant,

*John Doe.*  
Cooke.

Cooke.

*Easter Term in the Thirteenth  
Year of King George the Se-  
cond.*

Suffolk, *T. C.* late of London, Gentleman, *Declaration in  
to wit,* was attached to answer *E. S.* *ejection of  
manors, messu-  
ages, barns,  
stables, &c.*  
in a plea, wherefore with force and arms  
he entered into the manors of *K.* other-  
wise *K. H. C. H. B.* and *G. W.* and 50 mes-  
suages, 50 barns, 50 stables, 50 gardens,  
20 cottages, one water corn-mill, one wind-  
mill, 1000 acres of land, 1000 acres of  
meadow, 1000 acres of pasture, 500 acres  
of wood, and 500 acres of furz and heath,  
with the appurtenances, in the parishes of  
*G. W. L. W. B.* and *K.* in the said county  
of Suffolk, which the honourable *M. G.*  
spinster, demised to the said *E.* for a term  
which is not yet expired, and ejected him  
from his said farm, and other wrongs  
to him did, to the great damage of the  
said *E.* and against the peace of our so-  
vereign lord the king; And whereupon  
the said *E.* by *J. W.* his attorney complains,  
That whereas the said *M.* on the first day  
of January in the 13th year of the reign  
of his said majesty, at Ipswich in the  
county aforesaid, had demised to the said  
*E.* the said manors and tenements, with  
the appurtenances; To have and to hold  
the said manors and tenements, with the  
appurtenances, to the said *E.* and his as-  
signs, from the 29th day of September then  
last

last past, to the full end and term of seven years then next following, and fully to be complete and ended: By virtue of which said demise the said *E.* entered into the said manors and tenements with the appurtenances, and was possessed thereof; And the said *E.* being so possessed thereof the said *T.* afterwards (that is to say) on the said first day of *January* in the said 13th year, with force and arms, that is to say, with swords, staves, and knives, entered into the said manors and tenements with the appurtenances, which the said *M.* demised to the said *E.* in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said *E.* out of his said farm, and other wrongs, &c. to the great damage, &c. and against the peace, &c. Whereupon the said *E.* says he is injured, and hath damage to the value of 20*l.* And thereupon he brings this suit, &c.

*T. H.*

*The notice.*

I am informed that you are in possession, or claim title to the premisses in this declaration of ejectment mentioned, or to some part thereof; And I being sued in this action as a casual ejector, and having no claim nor title to the same, do advise you to appear on the first day of next *Trinity* term in his majesty's court of Common Bench at *Westminster*, by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, other-

otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving Friend,

20 May 1740.

T. C.

Lincoln, *A. B.* late of, *Esq.* was attached *Declaration in*  
to wit, *A.* to answer *C. D.* in a plea, *ejection on a*  
wherefore with force and arms he entered *double demise.*

into 500 acres of land, *Esq.* in the parish of *S.* in the county aforesaid, which *E. F.* demised to the said *C.* for a term which is not yet expired; and into 500 other acres, *Esq.* in the parish of *S.* aforesaid in the county aforesaid, which *G. H.* demised to the said *C.* for a term which is not yet expired, and ejected him from his said several farms, and other wrongs to him did, to the great damage of the said *C.* and against the peace of our lord the now king, *Esq.* And whereupon the said *C.* by *W. R.* his attorney complains, That whereas the said *E.* on the day of in the year 1. *Demise.*

of the reign of the said lord the king, at in the county aforesaid, had demised to the said *C.* the tenements aforesaid first above mentioned, with the appurtenances; To have and to hold the same tenements first above mentioned with the appurtenances, to the said *C.* and his assigns, from the feast of then last past, to the full end and term of years, from thence following, and fully to be complete and ended. And whereas also the said *G.* on the 2. *Demise.*  
same

same day of in the said year of the reign of our said lord the king, at afore said in the county afore said, had demised to the said C. the tenements afore said last above mentioned with the appurtenances; To have and to hold the same tenements last above mentioned with the appurtenances to the said C. and his assigns, from the said day of then last past, to the full end and term of years from thence next following, and fully to be complete and ended; By virtue of which said several demises the said C. entered into the several tenements afore said, with the appurtenances, and was possessed thereof; and the said C. being so possessed thereof, the said A. afterwards, that is to say, on the day of in the said year of the reign of our said lord the king, with force and arms, that is to say, with swords, staves and knives, entered into the said several tenements above specified, with the appurtenances, respectively demised to the said C. in manner afore said, and upon the possession of the said C. thereof, and ejected the said C. out of his said several farms (his said several terms therein not being ended) and other wrongs, &c. to the great damage, &c. and against the peace, &c. Whereupon the said C. saith, that he is injured and damaged to the value of 10*l*. And thereof he bringeth suit, &c.

In

In many cases the demise may be laid on a day after that term of which the declaration is, as where a title accrued at *Christmas*, a declaration of *Michaelmas* term is delivered before the escoin-day of *Hilary* term, and the demise is laid to be on the first day of *January*, if the tenant does not appear and defend, the court will give judgment against the casual ejector, and the tenant cannot move in arrest of judgment, as being no party to the suit; neither can a writ of error be brought in the casual ejector's name. If the tenant does appear, all will be right, for a declaration and issue will be made up of *Hilary* term, which will be after the demise.

No judgment shall be entered against the casual ejector without motion first made by a serjeant in court, and oath in writing of notice to the owner or tenant in possession of the lands in question, notwithstanding any former rule. *Pas. 12 Car. 2.*

The delivery of a declaration in ejectment must be to the tenant himself or his wife, otherwise not good, though it be to the tenant's son, daughter, or apprentice, unless the tenant afterwards acknowledged the receipt thereof; which acknowledgment must be proved to the court by affidavit.

Upon the delivery of a declaration in ejectment in *London* or *Middlesex*, the tenant in possession is to be acquainted, that he is to appear by his attorney here in court.

*Within what  
time motion for  
judgment must  
be made.*

court in defence of his title, in the beginning of the next term after the delivery of the declaration. And the plaintiff shall take nothing by his motion for judgment against the casual ejector for default of appearance, unless the motion be made within one week next after the first day of every *Michaelmas* term, and every *Easter* term, and within four days after the first day of every *Hilary* and *Trinity* term. *Trin. 32 Car. 2.*

This rule does not extend to vacant possessions.

*Declaration  
must be deli-  
vered before  
the effoin-day  
of the term.*

The declaration must be delivered to the tenant before the effoin-day of the term, or the plaintiff cannot have judgment till the term following.

*Notice in coun-  
try ejectments.*

In a country ejectment the tenant is to appear and plead within four days exclusive after the next issuable term; but if the lands lie in a county where the assizes are held but once a year, I apprehend he is not to appear and plead till four days after the term next preceding such assizes.

*In Lond. and  
Middlesex.*

If the lands lie in *London* or *Middlesex*, the notice to appear should be for the first day of the next term; if in any other county the notice may be for the beginning of the next term, or for the next term generally.

To move for judgment you make an affidavit of the service of the declaration in this form:

In

# in the Court of Common Pleas.

301

In the Common Pleas.

Richard Roe } In ejectment on the  
against } demise of Thomas Bland  
John Doe, } and Conrade de Golls.

L. R. of, &c. makes oath, That he this *Affidavit of service of a declaration in ejectment.*  
deponent did, on the day of  
last past, deliver to Mr. John Wilkinson,  
the tenant in possession of the premises  
mentioned in the declaration hereunto an-  
nexed, or of some part thereof, a true  
copy of the said declaration, and of the  
notice there under written, and did at the  
same time inform the said John Wilkinson,  
that unless he would appear in this court  
by some attorney thereof on the first day  
of this present Michaelmas term, and cause  
himself by rule of the said court to be  
made defendant in the room of the casual  
ejector John Doe, judgment would be en-  
tered against the said casual ejector by de-  
fault, and that he the said John Wilkinson  
would be turned out of possession; or  
words to that or the like effect.

On this affidavit you get a serjeant to  
move for judgment against the casual e-  
jector.

You pay,

l. s. d.

For the duty and oath of the }  
affidavit ———— } 0 2 0  
To the serjeant to move ———— 0 10 6  
Rule duty, and filing the affidavit 0 6 0

Thomson.

Thomson.

Hilary the Seventh of King George  
the Second.

Rule for judgment against the casual ejector.

Hunt against Jones, } Twelfth day of  
The casual ejector. } February, upon  
the affidavit of Thomas Shewell, Gent. It  
is ordered, That unless William Collins, tenant in possession of the tenements in question, or any other person concerned in the title thereof on Saturday next shall appear by an attorney of this court, who shall then forthwith receive a declaration and plead thereto the general issue, and consent to the common rule for confessing lease, entry and ouster, upon the trial to be had, let judgment against the casual ejector be entered; And in the mean time proceedings are to stay, upon the motion of Master Serjeant Baynes.

By the Court.

Enter'd.

Townesend.

Secondary not to receive declaration in ejectment unless signed by a serjeant.

No declaration in ejectment shall be taken or received by the secondary, unless signed by some serjeant at law, and delivered by himself to the secondary in open court. Hil. 2 Geo. 2.

Secondary, on request, to shew his alphabetical paper of ejectments.

The secondary shall the morning next after the end of every term, and at all other times when required, shew to any person who shall demand the same, his alphabetical paper of ejectments, moved

or delivered into court in each term.

*Same Rule.*

When the rule is out, you search the prothonotary's plea book, and if no plea is left, you ingross the declaration on a double half-crown stamped sheet of paper, to which you affix the rule against the casual ejector, and the prothonotary will sign judgment, then enter your judgment by *Nil dicit* on the roll, and make out a writ of *Habere facias possessionem*, for which you pay duty 1s. 6d. Signing 1s. 4d. Sealing 7d.

If the tenant appears, his attorney gets a blank rule from the secondary, for which he pays 6d. then fills it up according to the ensuing form, and signs his name at the bottom of it, ingrosses the general issue, Not guilty (*postea* 308.) in a double penny stamp'd sheet of paper and annexes the rule to it, after he enters an appearance for the tenant with the proper filacer, who thereupon stamps the rule, and then leaves the plea and rule annexed with the prothonotary.

*The Expence is as follows:*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Search for motion for judgment against the casual ejector. —	}	0	0 6
Blank rule — — —			
Entering appearance — —	0	2	0
Entering plea — — —	0	2	0

Thomson.

Thomson.

Michaelmas Term Seventh of George  
the Second.

*The general  
rule.  
Roe against  
Doe for 5 mes-  
suages with  
the appurte-  
nances, in the  
parish of Step-  
ney in the  
county of Mid.  
on the demise of  
F. Bland and  
Con. deGolls.*

Middlesex, **I**T is order'd by consent of  
to wit, **J.** D. attorney for the plain-  
tiff, and **L. R.** attorney for **J. W.** who  
claims title to the tenements in question,  
that the said **J. W.** shall be admitted de-  
fendant; And that the said **J. W.** shall  
immediately appear by his said attorney,  
who shall receive a declaration, and plead  
thereto the general issue this term; And  
at the trial to be had thereon shall ap-  
pear in his proper person, or by his coun-  
sel or attorney, and confess the lease, en-  
try and ouster of so much of the tene-  
ments specified in the plaintiff's declara-  
tion, as are in the possession of the said  
defendant or his tenants, or any persons  
claiming by or under his title; or that in  
default thereof judgment shall be there-  
upon entered against the defendant **John  
Doe** the casual ejector; but proceedings  
shall be stayed against him until default  
shall be made in any of the premisses; And  
by the like consent it is further ordered,  
That if by reason of any such default  
the plaintiff shall happen to be nonsuited  
upon the trial, the said **J. W.** shall take  
no advantage thereof, but shall thereupon  
pay to the plaintiff costs to be taxed by  
the prothonotary. And it is further or-  
dered, That the lessor of the plaintiff  
shall

shall be liable to the payment of costs to the said *J. W.* by the court here to be in any manner allowed or adjudged.

By the court.

*J. D.* for the plt.

*L. R.* for the deft.

From this rule the plaintiff's attorney gets two rules drawn up by the secondary in the same manner on stamp paper, one for each party; this costs 7s. and then the plaintiff's attorney will make up the issue, and deliver a copy of it, and notice of trial to the defendant's attorney; And thereupon proceed to trial, as in other cases.

If there be several defendants, and at the trial the plaintiff obtains a verdict against some of the defendants, and the other defendants, refuse to confess lease, entry and ouster, the plaintiff may sign judgment against the casual ejector as to them.

*Where several defts. and some refuse to confess lease, entry, &c.*

If the defendant's attorney does not pay for the issue, the plaintiff's attorney may sign judgment against the defendant, but not against the casual ejector, *ut dicatur*; but see the words of the rule by consent.

*If issue not paid for judgment against deft. who appeared.*

*A Nisi Prius Record in Ejection,  
with the Postea.*

Thomson.

*Pleas at Westminster before Sir Robert Eyre, Knt. and his Companions, the Lord our King's Justices of the Bench, of the Term of Easter in the Sixth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, &c.*

Ro. 579.

*Declaration.*

Middlesex, *C. L.* late of the parish of St. to wit, *C. John the Baptist* in the precinct of the *Savoy* in the *Strand* in the county aforesaid, Gent. was attached to answer *R. R.* of a plea, wherefore with force and arms, five chambers and one kitchen with the appurtenances, in the precinct of the *Savoy* aforesaid in the *Strand* in the county aforesaid, which *Sir P. B. Barr. and T. B. Esq;* to the aforesaid *R.* did demise for a term which is not yet past, he the said *C.* entered, and the said *R.* from his farm aforesaid ejected, and other enormities to him did, to the great damage of him the said *R.* and against his present majesty's peace. And whereupon the said *R.* by *J. S.* his attorney complains, That whereas the aforesaid *Sir P. B.* and *T. B.* the fifth day of *January* in

in the sixth year of his present majesty's reign, at the parish of *St. Clement Danes* in the county aforesaid, did demise unto him the said *R.* the tenements aforesaid, with the appurtenances; To have and to hold the tenements aforesaid, with the appurtenances, to the said *R.* and his assigns, from the 11th day of *December* then last past, unto the full end and term of five years from thence next following and fully to be complete and ended: By virtue of which demise the said *R.* into the tenements aforesaid, with the appurtenances, did enter, and was thereof possessed; and he the said *R.* so being thereof possessed, the aforesaid *C.* afterwards, *to wit*, the same 5th day of *January* in the 6th year aforesaid, with force and arms, &c. into the tenements aforesaid, with the appurtenances, which the aforesaid, *Sir P. B.* and *T. B.* to him the said *R.* in form aforesaid had demised for the term aforesaid which is not yet past, did enter, and him the said *R.* from his farm aforesaid did eject, and other enormities did to the said *R.* to the great damage of the said *R.* and against the peace of his present majesty; Whereupon he saith, that he is damnified, and hath damage to the value of 20*l.* And thereupon brings suit, &c.

And the said *C. L.* by *G. H.* his attor-*Plaa.*  
ney comes and defends the force and injury by the aforesaid *R.* against him charged, when and where, and in such man-

*Award of the  
Venire.*

ner, as this court shall award, and saith,  
That he is not guilty of the trespass and  
ejectment aforesaid, in such manner and  
form as the said R. R. hath against him  
above complained: And of this he puts  
himself upon his country: And the afore-  
said R. does so likewise, &c. Therefore  
the sheriff is commanded to cause to come  
here in five weeks from the feast-day of  
*Easter* twelve good and lawful men of the  
body of his county, every one of whom  
to have 10 *l.* at least by the year in lands,  
tenements or rents, by whom the truth  
of the matter may be better known, and  
who neither are any ways related to the  
said R. R. plaintiff, nor to the said C. L.  
defendant, to recognize whether the said  
C. L. is guilty of the premisses, as the said  
R. above complains, because as well the  
said R. as the said C. between whom the  
contention thereupon is, have put them-  
selves upon their country.

*Jurata.*

Middlesex, *to wit*, the jury between  
R. R. plaintiff, and C. L. late of the parish  
of *St. John Baptist* in the precinct of the  
*Savoy* in the *Strand* in the county aforesaid,  
Gent. in a plea of trespass and ejectment  
of the farm, is respited here until on the  
morrow of the holy *Trinity*, unless Sir  
*Robert Eyre*, Knt. chief justice of our lord  
the king of the Bench here assigned, by  
form of the statute in that case made and  
provided, on *Tuesday* the 8th day of *May*  
at *Westminster* in the great hall of pleas  
there,

there commonly called *Westminster-Hall*, in the said county, shall first come for the default of the jury, because none came, therefore let the sheriff have the bodies of the several persons mentioned in the panel to the writ of *Habeas Corpora Furatorum* annexed; And be it known, that the justices thereupon here in court in the same term delivered a writ to the deputy of the sheriff of the county aforesaid, to be executed according to due form of law, &c. Le Sciendum.

Afterwards the day and place within Postea. contained, before Sir Robert Eyre, Knight, chief justice within written, having John Higham, Gent. for his associate, by form of the statute, and so forth, cometh the within named R. R. by his attorney within contained, and the within written C. L. altho' solemnly called, cometh not; Therefore let the jury, whereof mention is within made, be taken against him by default; And the jurors of the said jury being called come, who to speak the truth of the within contained being elected, tried and sworn, say upon their oath, That the said C. is guilty of the trespass and ejectment within mentioned, as the said R. R. within complains against him; And they assess the damages of him the said R. on occasion thereof, over and above the costs and charges which he has been put to about his suit in this behalf, to 1 s and for the said costs and charges to 20 s. Therefore, &c.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Damages _____	0	1	0
Costs _____	1	0	0
Increase _____	15	15	8
In all _____	16	16	8

Signed 30 May 1733.

*Of new trials  
in ejectment.*

It is not usual to grant new trials in ejectment, where the verdict is for the defendant, because the plaintiff may bring a new ejectment, and no other disadvantage happens to him. But where the verdict is for the plaintiff it is otherwise, and new trials have been granted; for there the consequence of not granting a new trial is the alteration of the possession of the premises in question.

*Of costs in  
ejectment.*

Where a verdict in ejectment is for the defendant, or the plaintiff becomes nonsuited upon evidence, a *Ca. Sa.* must be made out against the plaintiff, and shew'd to his lessor, and the costs must be demanded thereupon of the lessor.

Where the plaintiff is nonsuited by reason of the defendant's not confessing lease, entry and ouster, the costs are taxed on the rule by consent, and judgment signed against the casual ejector.

*When a lease  
must be actually  
sealed on  
the premises.*

If there be no person in the house, or on the premises, to deliver a declaration in ejectment to, a lease of ejectment must be sealed at the house, or on the premises and the lessee left in possession, and some person appointed to enter and eject him; and then an action may be brought against such

such ejector, and the possession recovered.

Where half a year's rent shall be in arrear, the landlord, having a lawful right to re-enter for non-payment, may serve a declaration in ejectment without a formal demand or re-entry, or in case the same cannot be legally served, *Where fixing the declaration to the door of the house, &c. shall be legal service.* affix such declaration on the door of the demised messuage, or some notorious place of the lands, which shall be deemed a legal service; and on proof that half a year's rent was due before the said declaration was served, and no sufficient distress on the premises, the lessor shall recover judgment and execution as fully as in case a formal re-entry had been made; and if the lessee shall suffer judgment to be recovered on such ejectment and execution, without paying the arrears and costs, and without filing a bill within six months after execution, he shall be barred from all relief in law or equity, other than by writ of error, and the lessor shall hold the demised premises discharged from such lease. *Stat. 4 Geo. 2. c. 28.*

But if the tenant before trial will either tender to the lessor, or bring into court, the rent in arrear, together with all costs, all further proceedings shall cease. *Rent and costs brought into court, proceedings to stay. Same Stat.*

If an ejectment be brought on a vacant possession upon this act of parliament, the plaintiff may move for judgment against the casual ejector at any time in the term; the rule of *Trin. 32 Car. 2. antea fol. 300.* *On vacant possession may move for judgment any time in the term.*

relating only to an ejectment, where the declaration is delivered to the tenant in possession.

*Tenant secret-  
ing declara-  
tion in eject-  
ment forfeits  
three years  
improved rent.*

A tenant, to whom a declaration in ejectment shall be delivered for any lands, tenements or hereditaments, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so holden in possession of such tenant, to the person of whom he holds. *Stat. 11 Geo. 2. c. 19.*

*Landlord im-  
powered to  
make himself  
defendant.*

The court where such ejectment shall be brought may suffer the landlord to make himself defendant, by joining with the tenant to whom such declaration shall be delivered, in case he shall appear; but in case such tenant shall refuse to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself, and consent to enter into the like rule, that by the course of the court the tenant in possession, in case he had appeared, ought to have done, then the court shall permit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein. *Same Statute.*

GEORGE

GEORGE the Second, &c. To, &c. *Habere facias*  
 Greeting. Whereas *J. M.* lately in our possessionem.  
 court, before our justices at *Westminster*,  
 by the consideration of the said court, re-  
 covered his term yet to come of and in  
 the manor of *S.* with the appurtenances,  
 and 10 messuages, 500 acres of land, 100  
 acres of meadow, 300 acres of pasture,  
 with the appurtenances in *S.* in your  
 county, against *L. C.* late of, &c. which  
*J. C.* gentleman, on the 1st day of *Octo-*  
*ber* in the ——— year of our reign, de-  
 mised to the said *J. M.* to hold and enjoy  
 to the said *J. M.* and his assigns, from  
 the feast of saint *Michael* the archangel  
 then last past, unto the full end and  
 term of seven years thence next ensuing,  
 and fully to be complete and ended, which  
 is not yet past; and whereupon the said  
*L.* put out and amoved the said *J. M.*  
 from his possession, and ejected him from  
 his said farm: Therefore we command  
 you, that you cause the said *J. M.* to  
 have his possession of his said term yet to  
 come of and in the said manor and tene-  
 ments aforesaid, with the appurtenances;  
 and how you shall execute this our pre-  
 cept make appear to our justices at *West-*  
*minster* in eight days of the purification of  
 the blessed *Mary*; And have there this writ.  
 Witness, &c.

GEORGE the Second, &c. To, &c. *Habere facias*  
 Greeting. Whereas *W. D.* gentleman, possessionem,  
 lately in our court before our justices at *and a Fi. Fa.*  
*Westminster*,

*Westminster*, by the consideration of the said court recovered against *S. F.* late of, &c. his term yet to come of and in one messuage and 14 acres of land, with the appurtenances, in *L.* in your county, which *S. J.* and *E. J.* on the 1st day of *October* in the year of our Lord —, at *L.* aforesaid, demised to the said *W.* to hold and enjoy the said tenements with the appurtenances, to him and his assigns, from the — day of — then last past, unto the end and term of three years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said *S.* put out and amoved the said *W.* from his possession, and ejected him from his said farm, Therefore we command you, that without delay you cause the said *W.* to have his possession of his term aforesaid of and in the said messuage and tenements, with the appurtenances; and how you shall execute this our precept make appear to our justices at *Westminster* in eight days of the purification of the blessed *Mary*. We also command you, that of the goods and chattels of the said *S.* in your bailiwick you cause to be made 11 pounds, which were adjudged to the said *W.* in our said court for his damages, which he had by reason of the trespass and ejectment aforesaid, and have that money before our justices at *Westminster* at the said time, to render to the said *W.* for his damages aforesaid, whereof the said *S.* is convicted;

victed; And have there this writ. Wit-  
nels, &c.

GEORGE the Second, &c. To, &c. Habere facias  
Greeting. Whereas A. G. lately in our possessionem  
court before our justices at Westminster, for executor  
by the consideration of the said court Fa'. after a Sci.  
recovered his term of and in one mes-  
suage, 28 acres of land, five acres of  
meadow, and 17 acres of pasture,  
with the appurtenances, in C. in your  
county, against D. B. late of, &c. mer-  
chant, which W. N. on the 1st day  
of April in the ——— year of our  
reign, at C. aforesaid, demised to the said  
A. to hold and enjoy to him and his as-  
signs from the feast of the annunciation  
of the blessed virgin Mary then last past,  
unto the end and term of three years  
thence next ensuing and fully to be com-  
plete and ended, which is not yet past;  
and whereupon the said D. put out and  
amoved the said A. from his possession,  
and ejected him from his said farm there-  
in, which said A. after the said judgment  
was given, died, after whose death it is  
considered in our said court, that C. W. Sci. Fa'.  
and R. S. executors of the testament and  
last will of the said A. have execution  
against the said D. of the term aforesaid  
yet to come of and in the said tenements  
with the appurtenances, by the default of  
the said D. We therefore command you,  
that without delay you cause the said C.  
and R. to have possession of the said term  
yet

yet to come of and in the said tenements, with the appurtenances: And how you shall execute this our precept make appear to our justices at *Westminster* from the day of the holy *Trinity* in three weeks; And have there this writ. Witness, &c.

### Of writs of Scire Facias.

**A** *Scire Facias* is a judicial writ, and properly lies where one has recovered debt or damages, and has not sued out execution within the year and a day. It also lies on a recognizance of bail; and in many other cases it is called a *Scire Facias*, because of the words of the writ to the sheriff, viz. *Quod Scire Facias præfat. D. the defendant, Quod sit coram, &c. ostensurus si quid pro se habeat aut dicere sciat quare, &c.* so as by this writ it appears that the defendant is to be warned to plead any matter in bar of execution; and therefore although it be a judicial writ, yet because the defendant may plead thereto, this *Scire Facias* in law is accounted in nature of an action.

Sci. Fa.' after  
a year and a  
day.

**GEORGE** the Second, by the grace of God, of Great Britain, France and Ireland King, defender of the faith, &c. To the sheriff of *Middlesex*, greeting. Whereas *J. R.* lately in our court, to wit, in the term of *St. Hilary* in the

12th

*in the Court of Common Pleas.*

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12th year of our reign, before Sir *John Willes*, Knight, and his companions, then our justices of the Bench at *Westminster*, by the consideration of the same court recovered against *H. N.* late of, &c. otherwise called, &c. as well a certain debt of 40*l.* as 63*s.* which were adjudged to the said *J. R.* in our same court for his damages which he had by occasion of the detaining that debt, whereof the said *H.* is convicted, as by the record and proceedings thereof remaining in our same court before our justices at *Westminster* manifestly appears; *Tet* execution of the said judgment still remains to be made, as on the information of the said *J. J.* we have been given to understand; And because we are willing that those things which in our same court are rightly acted be demanded by a due execution, We command you, that by good and lawful men of your bailiwick, you make known to the said *H.* that he be before our justices at *Westminster*, on [the return] to shew if any thing he has or knows to say for himself, why the said *J.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if it shall seem expedient to him; And have there the names of them, by whom you shall make known to him, and this writ. Witness Sir *John Willes*, Knight, at *Westminster*, the ——— day of, &c.

*Note;*

*Note*; If the plaintiff has within the year and day sued out an execution, got it returned and filed, and continued it on the roll by *Vic' non misit breve*, it is sufficient to warrant an execution after the year and a day.

In this case one *Scire facias*, with a *Nihil* returned, is sufficient.

After you have got it return'd, you enter it on the roll in the following manner:

Entry of a  
Scire facias.

Middlesex, *to wit*, The sheriff was commanded, Whereas *J. R.* lately in the court of our lord the now king, *to wit*, in the term of *St. Hilary* in the twelfth year of the reign of our said lord the king, before Sir *John Willes*, Knight, and his companions, then justices of our said lord the king of the Bench here, *to wit*, at *Westminster*, by the consideration of the same court, recovered against *H. N.* late of, &c. otherwise called, &c. as well a certain debt of 40 *l.* as 63 *s.* which were adjudged to the said *J.* in the same court for his damages which he had by occasion of the detaining that debt whereof the said *H.* is convicted, as by the record and proceedings thereof remaining in the same court of our said lord the now king here, *to wit*, at *Westminster* aforesaid, manifestly appears; *Tet* execution of the said judgment still remains to be made, as on the information of the said *J.* the king has been given to understand; And because, &c. by good, &c. he make known to the said *H.* that he

be here at *Westminster* at this day, *to wit*,  
[*the return*] to shew if any thing, &c. why  
the said *J.* ought not to have execution  
against him for the debt and damages  
aforesaid, according to the form of the  
said recovery, if, &c. And now here at  
this day came the said *J.* by *L. R.* his at-  
torney, and offered himself on the fourth  
day against the said *H.* in the plea afore-  
said, and he being solemnly demanded  
came not; And the sheriff now sends that  
he has nothing, &c. nor is he found, &c.  
It is therefore considered that the said *J.*  
have execution against the said *H.* for the  
debt and damages aforesaid, by the de-  
fault, &c.

You also enter it on the prothonotary's  
remembrance, and give a rule for judg-  
ment.

*GEORGE* the Second, &c. To, &c. Scire facias in  
Whereas *H. S.* lately in our court, *to wit*, *debt for an ad-*  
in the term of *St. Hilary* in the 13th year *ministrator.*  
of our reign, before Sir *John Willes*,  
Knt. and his companions, then our justices  
of the Bench at *Westminster*, by the con-  
sideration of the same court, recovered  
against *N. C.* late of, &c. otherwise called,  
&c. as well a certain debt of 200 *l.* as 63 *s.*  
which in our said court were adjudged to  
the said *H.* for his damages which he had  
by occasion of the detaining that debt  
whereof the said *N.* is convicted, as by  
the record and proceedings thereof remain-  
ing

ing in our said court manifestly appears; *Yet* execution of the said judgment still remains to be made, and the said *H.* is dead, as on the information of *W. S.* widow, administratrix of all the goods and chattels which were of the said *H.* at the time of his death, we have been given to understand; And because we are willing that those things which in our said court have been rightly acted should be demanded by a due execution, we command you, that by good and lawful men of your bailiwick you make known to the said *N.* that he be before our justices at *Westminster* on [the return] to shew if any thing he has or knows to say for himself, why the said *W.* ought not to have execution against him, &c. *ut antea*, fol. 317.

*Entry of a Scire facias in debt by an executor.*

—— to wit, The sheriff was commanded, [*ut antea*, fol. 318.] yet execution still remains to be made, and the said *W.* is dead, as on the information of *R. W.* executor of the testament of the said *W.* the king has been informed; And because, &c. by good, &c. make known to the said *B.* [*ut antea*, fol. 318, 319.] And now here at this day came the said *R.* by *J. S.* his attorney, and offered himself on the 4th day against the said *B.* in the plea aforesaid, and the said *B.* being solemnly demanded came not; and the sheriff now returns that he has nothing, &c. nor is he found, &c. And upon this the said *R.* brings here into court the letters testamentary

*Nihil return'd.*

*Profert.*

tary of the said *W.* by which it sufficiently appears to the court here, that the said *R.* is executor of the testament of the said *W.* and thereof has the administration, &c. and he prays execution against the said *B.* of the debt and damages aforesaid in form aforesaid to be adjudged to him, &c. It is therefore considered that the said *R.* have execution against the said *B.* of the debt and damages aforesaid, by the default of the said *B.* &c. *Judgment.*

— to wit, The sheriff was com- *Entry of a Sci-*  
manded, Whereas *R. G.* lately in the court *re facias in*  
of our lord the king here, to wit, in the *case against an*  
term of *St. Hilary* in the first year of his *administrator.*  
reign, before *Sir Robert Eyre, Knt.* and  
his companions, then justices of our lord  
the king of the Bench here, to wit, at *West-*  
*minsters*, by the consideration of the same  
court, recovered against *P. G.* late of  
*Southwark* in the county of *Surrey*, dyer,  
181. which to the said *R.* in the same  
court of our lord the king now here, were  
adjudged for his damages, which he had  
by occasion of the not performing certain  
promises and undertakings made by the  
said *P.* in his life-time to the said *R.*  
whereof the said *P.* was convicted, as by  
the record and proceedings thereof re-  
maining in the same court of our lord the  
king now here, to wit, at *Westminster* a-  
aforesaid, manifestly appears; *Tet* execu-  
tion of the said judgment still remains to  
be made, and the said *P.* is dead, as on  
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the information of the said R. the king has been informed; And because, &c. that by good, &c. he should make known to A. G. widow, administratrix of the goods and chattels which were of the said P. who died intestate, &c. that she be here at this day, *to wit*, from the day of St. Michael in three weeks, to shew if any thing, &c. why the said R. ought not to have execution against her of the damages aforesaid, of the goods and chattels which were of the said P. at the time of his death, being in the hands of the said A. to be administered, if she has so much in her hands, according to the form of the said recovery, if, &c. And now here at this day came the said R. by L. R. his attorney, and offered himself on the 4th day against the said A. in the plea aforesaid, and she being solemnly demanded came not; And the sheriff now returns that she has nothing, &c. nor is she found, &c. Therefore, *as before*, the sheriff was commanded, that by good, &c. he should make known to the said A. that she should be here at this day, *to wit*, on the [*the return*] to shew in form aforesaid; At which day came the said R. by his said attorney; And hereupon the said A. on the 4th day of the plea being solemnly demanded came not; And the sheriff, *as before*, returns that she has nothing, &c. nor is she found, &c. and upon this the said R. says, that after the judgment aforesaid rendered the said P. died intestate, and that administration

Return Nihil.

Alias Sci. fa.

Return Nihil.

stration of the goods and chattels which were of the said P. at the time of his death, after the death of the said P. was committed to the said A. at *Southwark* aforesaid; And the said R. prays execution against the said A. of the damages aforesaid, of the goods and chattels which were of the said P. at the time of his death, being in the hands of the said A. to be administered, if she has so much thereof in her hands. It is therefore considered that the said R. have execution against the said A. of the damages aforesaid, of the goods and chattels which were of the said P. at the time of his death in the hands of the said A. to be administered, if she has so much thereof in her hands, &c. by the default of the said A. &c. *Judgment.*

London, *to wit*, The sheriffs were commanded, Whereas R. F. [*as before, to*] *Entry of a Scire facias in debt* Tet execution of the said judgment still against executors, and two remains to be made, and the said T. is dead, *Nihils return'd.* as on the information of the said R. the king has been inform'd; And because, &c. that by good, &c. they make known to A. J. widow, and M. J. executors of the testament of the said T. that they be here at this day, *to wit*, from the day of *Easter* in 15 days, to shew if any thing, &c. why the said R. ought not to have execution against them of the debt and damages aforesaid, of the goods and chattels of the said T. J. at the time of his death, in their hands

hands to be administered, according to the form of the said recovery, if, &c. And now here at this day came the said R. by W. E. his attorney; And the said A. and M. on the 4th day of the plea being solemnly demanded came not; And the sheriffs now return, that the said A. and M. have nothing, &c. nor are they found, &c. Therefore, *as before*, the sheriffs are commanded, that by good, &c. he make known to the said A. and M. that they be here from the day of *Easter* in five weeks to shew in form aforesaid; At which day here came as well the said R. by his attorney aforesaid, as the said A. and M. by F. K. their attorney; And the sheriff now returns that they have nothing, &c. nor are they found, &c. *ut antea*.

*Where one Sci.  
fa. return'd  
Nihil is suffi-  
cient.*

In case of the death of either party judgment must be revived by *Scire facias*. In case of the death of the defendant you must have a *Scire feci* or two *Nibils* return'd; but in case of the plaintiff's death one *Nihil* is sufficient.

*Where if plt. or  
def. dies after  
interlocutory,  
and before final  
judgment, pro-  
ceedings may  
be revived by  
Scire facias.*

In all actions in this court, if any plaintiff shall happen to die after any interlocutory judgment, and before final judgment, the action shall not abate if such action might be originally maintained by the executors or administrators of such plaintiff; and if the defendant die after interlocutory judgment, and before final judgment, the action shall not abate, if such action might be originally prosecuted against

against the executors or administrators of such defendant; and the plaintiff, or his executors or administrators shall have a *Scire facias* against the defendant, his executors or his administrators, to shew cause why damages in such action should not be assessed and recovered; and if such defendant, &c. shall appear at the return of such writ, and not alledge matter sufficient to arrest the final judgment, or (being returned warned, or upon two writs of *Scire facias* it be returned, that the defendant, &c. had nothing, &c.) shall make default, a writ of inquiry shall be awarded, which being executed and returned, final judgment shall be given. Stat. 8 & 9 W. 3. c. 9. §. 6, 15.

GEORGE the Second, &c. To the *A Scire facias*  
 sheriffs of London, greeting. Whereas G. K. *where the plt.*  
 in his life-time, lately in our court, *died after in-* to wit,  
 in the term of Easter in the 10th year *interlocutory*  
 of our reign, before Sir John Willes, Knt. *judgment, and*  
 and his companions, then our justices of *before final* judgment.  
 the Bench at Westminster, by our writ  
 had impleaded M. G. late of London, wi-  
 dow, declaring in the same plea against  
 her, That whereas the said M. [*setting Recital of the*  
*forth the whole declaration to*] And thereof *interlocutory*  
 he brought suit, &c. And it was pro- *judgment.*  
 ceeded in our same court in such man-  
 ner, that in the term of the holy Trinity  
 in the 10th and 11th years of our reign,  
 by the same court it was considered,  
 that the aforesaid G. ought to have re-  
 covered

*And award  
of inquiry.*

covered his damages against the said *M.* occasioned by not performing the promises and undertakings aforesaid. But because it was not known what damages the said *G.* has sustained on occasion of not performing the promises and undertakings aforesaid; Therefore the sheriffs of *London* were commanded, that by the oath of good and lawful men of their bailiwick they should diligently inquire, what damages the said *G.* had sustained, as well on occasion of the not performing the promises and undertakings aforesaid, as for his costs and charges by him about his suit in that behalf laid out; and the inquiry which the sheriffs should thereof make, they should make manifest to our justices at *Westminster* aforesaid, from the day of *St. Michael* in three weeks then next following, under the seal, &c. and the seals, &c. as by the record and process thereof remaining in our same court, *to wit*, at *Westminster* aforesaid, may plainly appear. The inquiry nevertheless of the damages aforesaid yet remains to be made; And the aforesaid *G.* at *London* aforesaid made his testament and last will in writing, and thereby constituted and appointed *E. K.* his wife sole executrix thereof; and afterwards, and after the judgment aforesaid given at *London* aforesaid died, after whose death the said *G.* proved the said testament in due form of law, and took the burthen of the execution of that testament upon her, as by the letters testamentary thereof

*Death of pl.  
Executrix  
proves his will.*

*Profert.*

thereof here in court by the said *E.* produced to our justices sufficiently appears; And because we will those things which in our same court are rightly acted be duly carried into execution, We command you, *Sci. Fa.* that by good and lawful men of your bailiwick you make known to the said *M.* that she be before our justices at *Westminster* on the morrow of *St. Martin*, to shew if she hath, or knoweth any thing to say for herself, why the damages aforesaid by him the said *G.* on occasion of not performing the promises and undertakings aforesaid, in the action aforesaid sustained, should not be assessed and adjudged to the said *E.* according to the form of the statute in this case lately made and provided, if to her it shall seem expedient; And have you there the names of those by whom you shall make it known to her, and this writ. Witness Sir *John Willes*, Knight, at *Westminster*, the 20th day of *October* in the 11th year of our reign.

If a *Nihil* be returned, according to the above statute, an *Alias Scire facias* must issue; you must enter them *verbatim* in the prothonotary's remembrance roll, and give a rule.

London, *to wit*, The sheriffs were com- Entry of the  
manded, Whereas *G. K.* lately in the above Scire  
court of our lord the now king, *to wit*, Facias.  
in *Easter* term the 10th year of the reign Firſt Scire Fa-  
of our said lord the king, before Sir *John* cias roll.  
*Willes*, Knight, and his companions, then  
Y 4 justices

justices of our said lord the king of the Bench here, *to wit*, at *Westminster*, by the writ of our said lord the king, had impleaded *M. G.* late of *London*, widow, declaring in the same plea against her, That whereas [*setting forth the whole declaration, as in the Sci. Fa.*] And it was proceeded in the same court of our said lord the king in such manner, that in the term of the Holy Trinity in the 10th and 11th years of the reign of our said lord the king, by the same court it was considered, that the aforesaid *G.* ought to have recovered his damages against the said *M.* occasioned by not performing the promises and undertakings aforesaid: But because it was not known what damages the said *G.* had sustained on occasion of not performing the said promises and undertakings, therefore the then sheriffs were commanded, that by the oath of good and lawful men of their bailiwick they should diligently inquire what damages the said *G.* had sustained, as well on occasion of the not performing the promises and undertakings aforesaid, as for his costs and charges by him about his suit in that behalf laid out; and the inquiry which the sheriffs should thereof make, they should make manifest to the justices of our said lord the king, *to wit*, at *Westminster* aforesaid, from the day of Saint Michael in three weeks then next following, under the seal, &c. and the seals, &c. as by the record, and process thereof in the same

fame court of our said lord the king here, *to wit*, at *Westminster* aforesaid remaining, may plainly appear. The inquiry nevertheless of the damages aforesaid yet remains to be made, and the said *G.* at *London* aforesaid made his testament and last will, and thereby constituted and appointed *E. K.* his wife sole executrix thereof; and afterwards, and after the judgment aforesaid given at *London* aforesaid, died, after whose death the said *E.* proved the said testament in due form of law, and took the burden of the execution of that testament upon her, as by the letters testamentary thereof here, *to wit*, at *Westminster* aforesaid, by the said *E.* produced to the said justices of our said lord the king sufficiently appears. And because, &c. that by good, &c. the said sheriffs should make known to the said *M.* that she should be here at this day, *to wit*, on the morrow of *St. Martin*, to shew if any thing, &c. why the damages aforesaid, by him the said *G.* on occasion of not performing the promises and undertakings aforesaid, in the action aforesaid sustained, should not be assessed and adjudged to the said *E.* according to the form of the statute in this case lately made and provided, if, &c. And now here at this day, *to wit*, on the morrow of *St. Martin* aforesaid, cometh the aforesaid *E.* by *W. T.* her attorney, and hath offered herself the fourth day against the said *M.* in the plea aforesaid; and the said *M.* being solemnly  
called

*Return Nihil.*

called cometh not; and the now sheriffs do return, that she hath nothing, &c. nor is to be found, &c. Therefore, as before, the sheriffs are commanded, that by good, &c. they make known to the said *M.* that she be here in eight days of *St. Hilary*, to shew in manner aforesaid.

*Second Scire  
Facias Roll.*

London, *to wit*, Heretofore, as it appears in this same term, in the roll it is thus contained, *to wit*, London, *to wit*, The sheriffs were commanded [*the last entry verbatim, and then go on*]. At which day here cometh the said *E.* by *W. T.* her said attorney, and hath offered herself the fourth day against the said *M.* in the plea aforesaid; and the said *M.* being solemnly called cometh not; and the

*Return Nihil.*

sheriffs, as before, do return, that she hath nothing, &c. nor is to be found, &c. And hereupon the said *E.* prayeth, that the damages aforesaid, by him the said *G.* on occasion of not performing the promises and undertakings aforesaid, in the action aforesaid sustained, may be assessed and adjudged unto her; Therefore it is considered, that the damages aforesaid, by him the said *G.* on occasion of not performing the promises and undertakings aforesaid sustained, be assessed and adjudged unto the said *E.* according to the form of the statute in that case made and provided, by default; And because it is still unknown what damages the said *G.* hath sustained by reason of the premisses aforesaid;

*Judgment  
that damages  
be assessed.*

Therefore,

Therefore, as before, the sheriffs are com- *Inquiry a-*  
manded, that by the oath of good and *warded.*  
lawful men of their bailiwick, they dili-

gently inquire what damages the said G.  
hath sustained, as well by reason of the  
said premisses, as for his costs and charges  
by him laid out about his suit in that be-  
half; and the inquisition which they shall  
thereupon make, that they make manifest  
to the justices of the lord the king here,  
*to wit*, at *Westminster* aforesaid, in eight  
days of the purification of the blessed Ma-  
ry, under the seal, &c. and the seals, &c.

At which day here cometh the said E. by *Return of in-*  
her said attorney, and the sheriffs, *to wit*, *quity.*

Sir George Champion, Knt. and Robert Ca-  
ter, Esq; now return here a certain inqui-  
sition taken before them at *Guildhall* in the  
parish of *St. Lawrence Jewry* in the ward  
of *Cheap* of the same city, on the 4th day  
of *February* last past, by the oath of 12,  
&c. by which it is found, that the said G.  
by reason of the premisses sustained da-  
mages, besides his costs laid out by him  
about his suit in that behalf, to 105 l. and  
for his costs and charges aforesaid to 27 s.

4 d. Therefore it is considered, that the *Judgment*  
said E. as executrix aforesaid, do recover *signed 17 A-*  
against the said M. the said damages to *pril 1737.*  
106 l. 7 s. 4 d. found by the said inqui-  
sition in manner aforesaid; and also 11 l.  
2 s. 8 d. adjudged by the court here to  
the said E. at her request, for the increase  
of the costs and charges aforesaid; which  
said damages amount in the whole to 117 l.

10 s.

Mercy.

10 s. And the said M. in mercy, &c. —  
H. 11 G. 2. Ro. 341.

Entry of Scire  
Facias against  
bail.

Note; the first  
writ is made  
out by the fi-  
lacer.

Middlesex, to wit, The sheriff was com-  
manded, Whereas *J. H.* of, &c. and *S. A.*  
of, &c. lately, that is to say, in *Michael-*  
*mas* term in the 12th year of the reign of  
our sovereign lord the now king before Sir  
*John Willes*, Knt. and his companions,  
then our said lord the king's justices of the  
bench at *Westminster*, came in their proper  
persons, and acknowledged, and each of  
them by himself acknowledged, to owe to  
*H. D.* the sum of 110*l.* which said sum  
of 110*l.* they the said *J.* and *S.* for them-  
selves and their heirs willed and granted,  
and each of them for himself and his heirs,  
willed and granted to be made of their  
and each of their lands and chattels, and  
to be levied to the use and behoof of the  
said *H.* And whereas *J. H.* of, &c. late-  
ly, that is to say, in the same *Michaelmas*  
term in the 12th year aforesaid, in the  
said court of our said lord the king, be-  
fore Sir *John Willes*, Knt. and his com-  
panions, then our said lord the king's ju-  
stices of the bench at *Westminster*, came in  
his proper person, and acknowledged him-  
self to owe to the said *H. D.* the sum of  
220*l.* which said sum of 220*l.* the said  
*J. H.* for himself and his heirs, willed and  
granted to be made of his lands and chat-  
tels, and to be levied to the use and be-  
hoof of the said *H.* under this condition,  
that if judgment should happen to be gi-  
ven

ven for the said *H.* against the said *J. H.* in the same court, in a certain plea of debt upon demand for 124 *l.* prosecuted in the same court by the said *H.* against the said *J. H.* that then the said *J. H.* would satisfy the said *H.* his said debt and damages on occasion of detaining the said debt to be adjudged to the said *H.* against the said *J. H.* in the same court in the plea aforesaid, or render his body on that occasion to the prison of our said lord the king of the *Fleet*; And although the said *H.* afterwards, that is to say, in the same *Michaelmas* term in the said 12th year of the reign of our said lord the king, in the same court, before the said Sir *John Willes*, Knt. and his companions, then our said lord the king's justices of the bench aforesaid, by the judgment and consideration of the same court, recovered against the said *J. H.* as well his said debt of 124 *l.* as 16 *l.* 10 *s.* which were adjudged to the said *H.* in the same court for his damages, which he had on occasion of detaining that debt, whereof the said *J. H.* is convicted, as by the record and proceedings thereof now remaining in the same court at *Westminster* aforesaid is manifestly apparent. Nevertheless the said *J. H.* hath not yet satisfied the said *H.* for his debt and damages aforesaid, nor rendered his body on that occasion to the said prison of the *Fleet*, according to the form of the said recognizance, as our said lord the king has received information from the said

said *H.* And because, &c. that by good, &c. he should make known to the said *J. H.* *J. H.* and *S.* that they be here at this day, that is to say, on the morrow of the holy *Trinity*, to shew if any thing, &c. that is to say, the said *J. H.* why the said 110 *l.* by him in form acknowledged should not be made of his lands and chattels; And the said *S.* why the said 110 *l.* by him in form aforesaid acknowledged should not be made of his lands and chattels; And the said *J. H.* why the said 220 *l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and levied to the use and behoof of the said *H.* according to the form of the said recognizance, if, &c. And now at this day the said *H.* cometh here by *L. R.* his attorney, and offered himself on the fourth day against the said *J. H. S.* *J. H.* in the plea aforesaid; and they, though solemnly called, came not; and the sheriff now returneth, that the said *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any of them found, &c. Therefore, as before, the sheriff was commanded, that by good, &c. he should make known to the said *J. H. S.* and *J. H.* that they be here from the day of the holy *Trinity* in three weeks, to shew in form aforesaid; At which day the said *H.* cometh here by his attorney aforesaid, and offered himself on the fourth day against the said *J. H. S.* and *J. H.* in the plea  
I  
aforesaid,

*Return Nihil.*

*Alias awarded.*

aforesaid, and they, though solemnly called, come nor; and the sheriff, as before, now returneth, that the said *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any one of them found, &c. And thereupon the said *H.* prays execution against the said *J. H. S.* and *J. H.* *to wit*, against the said *J. H.* of the said 110 *l.* by him in form aforesaid acknowledged, and against the said *S.* of the said 110 *l.* by him in form aforesaid acknowledged, and against the said *J. H.* of the said 220 *l.* by him in form aforesaid acknowledged, according to the form of the recognizance, to be adjudged to him, &c. *Judgment.* Therefore it is considered, that the said *H.* have execution against the said *J. H. S.* and *J. H.* that is to say, against the said *J. H.* of the said 110 *l.* by him in form aforesaid acknowledged; and against the said *S.* of the said 110 *l.* by him in form aforesaid acknowledged; and against the said *J. H.* of the said 220 *l.* by him in form aforesaid acknowledged, by default, &c.

——, *to wit*, It was commanded to the sheriff, Whereas *W. M.* of the parish of St. Olave in Southwark, yeoman, and *T. G.* of the parish of C. &c. heretofore, *to wit*, on the 27th day of September in the —— year of the reign of our lord the now king, before Sir ——, Knt. chief justice of our lord the king of the bench, at his chamber situate in Serjeants-Inn

*Entry of a Sci. Fa. against bail in case upon a plaint removed from the borough court of Southwark.*

*Inu* in *Chancery-Lane*, in their proper persons became bail, and each of them separately by himself became bail for *M. M.* in the sum of 20 *l.* And the said *M. M.* then and there in his proper person, before the said chief justice, then and there undertook for himself in the sum of 40 *l.* that the said *M.* would appear in the court of our lord the king here, *to wit*, at *Westminster*, in his proper person, or by his attorney sufficient in the law, to a certain original writ in a plea of trespass on the case to the damage of 20 *l.* by one *H. H.* to be obtained against the said *M.* before the octave of *St. Hilary* then next ensuing, and in the same court of our said lord the king here to be prosecuted, and to answer the said *H.* in the said plea; And also if judgment should happen to be given in the said plea in the same court of our said lord the king here for the said *H.* against the said *M.* to satisfy to the said *H.* the damages to be recovered or adjudged for the said *H.* against the said *M.* in the plea aforesaid, or that he the said *M.* would render himself on that occasion to the prison of our lord the king of the *Fleet*; which said sum of 20 *l.* each of them the said *W.* and *T.* acknowledged to be made of their lands and chattels, and which said sum of 40 *l.* the said *M.* acknowledged to be made of his lands and chattels, and to the use and behoof of the said *H.* in form aforesaid to levied, if it should happen, that the said

*M.* should make default in any of the premisses, and be lawfully convicted: Which said recognizance before the said chief justice in form aforesaid taken and acknowledged, the said chief justice afterwards, *to wit*, on the 28th day of *November* in the ——— year of the reign of our said lord the king, by his own hands delivered here into court, to be inrolled of record, and there it remains inrolled; and of which said plea of trespass on the case, a certain plaint was then levied before Sir *J. R.* Knt. then steward of the court of our said lord the king of his borough of *Southwark*, being in the county of *Surrey*; And that plaint, by the writ of our said lord the king by his command was sent, and had here, *to wit*, at *Westminster*, as by the record thereof in the court of our said lord the king here, *to wit*, at *Westminster* aforesaid remaining manifestly appears; And the said *H.* by the name of *H. P.* afterwards, and before the said octave of *St. Hilary* next ensuing the said 28th day of *September* aforesaid in the ——— year aforesaid, *to wit*, on the 6th day of *November* in the said ——— year of the reign of our said lord the king obtained a certain original writ in a plea of trespass on the case, to the damage of 20 *l.* out of the court of *Chancery* of our said lord the king, directed to the then sheriffs of *London*, returnable and returned before the justices of our lord the king here, *to wit*, at *Westminster* aforesaid, from

the day of *St. Martin* in fifteen days then next ensuing against the said *M.* by the name of *M. M. of S.* in the county of *Surrey*, victualler, to which said original writ the said *M.* by *J. O.* his attorney, appeared according to the form of the said recognizance; And also although the said *H.* afterwards, *to wit*, in the term of *St. Hilary* last past, in the same court of our said lord the king here, *to wit*, at *Westminster* aforesaid, before Sir ———, Knt. and his companions, then justices of our lord the king of the bench here, in and upon the said plea recovered against the said *M.* 19 *l.* which were adjudged to the said *H.* in the same court of our said lord the king here, *to wit*, at *Westminster* aforesaid, for his damages which he had sustained by occasion of the not performing certain promises and undertakings to the said *H.* by the said *M.* made at *London*, whereof he is convicted, as by the record and proceedings thereof in the same court of our said lord the king here, *to wit*, at *Westminster* aforesaid, likewise remaining also manifestly appears; Yet the said *M.* has not yet satisfied the said *H.* for the damages aforesaid, nor rendered his body on that occasion to the prison of our said lord the king of the *Fleet*, according to the form of the said recognizance, as the king is given to understand from the information of the said *H.* And because, &c. that by good, &c. he make known to the said *W. T.* and *M.* that

that they be here at this day, *to wit*, from the day of *Easter* in five weeks, to shew if any thing, *&c. to wit*, why the said 20 l. by the said *W.* in form aforesaid acknowledged, should not be made of his lands and chattels; And why the said 20 l. by the said *T.* in form aforesaid acknowledged, should not be made of his lands and chattels; And also why the said 40 l. by the said *M.* in form aforesaid acknowledged, should not be made of his lands and chattels, and be rendered to the said *H.* according to the form of the said recognizance, if, *&c.* And now here at this day came the said *H.* by *H. V.* his attorney, and offered himself on the fourth day against the said *W. T.* and *M.* in the plea aforesaid; And they being solemnly demanded came not; And the sheriff now *Return Nihil.* returns, that the said *W. T.* and *M.* have nothing, nor has either of them any thing, *&c.* nor are they, nor is either of them found, *&c.* Therefore, as before, the sheriff is commanded, that by good, *&c. Alias awarded.* he make known to the said *W. T.* and *M.* that they be here on the morrow of the holy *Trinity*, to shew in form aforesaid, *&c.* At which day here came as well *Defts. appear.* the said *H.* by *M.* his attorney aforesaid, as the said *W. T.* and *M.* by *J. O.* their attorney; And the sheriff, as before, *Return Nihil.* returns, that they have nothing, nor has either of them any thing, *&c.* nor are they nor is either of them found, *&c.* And  

Z 2

upon

upon this the said *H.* prays execution against the said *W. T.* and *M.* to wit, against the said *W.* of the said 20*l.* by him in form aforesaid acknowledged; and against the said *T.* of the said 20*l.* by him in form aforesaid acknowledged; and also against the said *M.* of the said 40*l.* by him in form aforesaid acknowledged, according to the form of the said recovery to be adjudged to him, &c.

*Plea Nul tiel Record Recuperationis and Issue, Officina Brevium, fol. 280.*

*Sci. Fa. against bail on a Habeas Corpus upon a recognizance taken before a commissioner, defendant in person.*

*Stat. 4 W. & M. c. 4.*

*GEORGE, &c.* To the sheriff of *Middlesex*, greeting. Whereas *S. N.* of the city of *Coventry* in the county of the same city, cordwainer, and *J. S.* of the same city in the county of the same city, farrier, heretofore, to wit, on the fourth day of *May* in the ——— year, &c. before *S. W.* Esq; one of the commissioners by our justices at *Westminster* appointed, according to the form of the statute in this case lately made and provided, became bail, and each of them became bail for *J. F.* in the sum of 50*l.* And whereas the said *J. F.* on the same 4th day of *May* in the ——— year of, &c. aforesaid, before the same commissioner acknowledged, that he owed to *B. C.* the sum of 100*l.* Which said sum of 50*l.* the said *S.* and *J.* acknowledged, and each of them acknowledged to be made of their, and each of their

their lands and chattels; and which said sum of 100 l. the said J. S. acknowledged to be made of his lands and chattels, and levied to the use and behoof of the said B. upon this condition, that the said J. F. should appear in our court before our justices at *Westminster*, at the suit of the said B. in a certain plea of trespass and assault to the damage of 50 l. And if in our same court judgment should happen to be given in the same plea for the said B. against the said J. F. then the said J. F. should satisfy all the damages which should be adjudged to the said B. in our same court in the plea aforesaid, or render his body on that occasion to the prison of the *Fleet*, as by the record and proceedings thereof remaining in our same court manifestly appears. And although the said B. in the term of *Easter* in the ——— year of, &c. before Sir ———, Knt. and his companions, our justices of the bench at *Westminster*, by the consideration of the same court had recovered against the said J. F. 19 l. which in our same court were adjudged to the said B. for his damages which he had by occasion of the said trespass and assault whereof the said J. F. is convicted, as by the record and proceedings thereof in our same court also remaining manifestly appears; Yet the said J. F. has not satisfied the said damages to the said B. nor rendered his body on that occasion to the said prison of the *Fleet*,

according to the form of the said recognizance, as from the information of the said B. we have been given to understand: And because we will that those things which in our said court are rightly acted and acknowledged, be brought to a due execution, We command you, that by good and lawful men of your bailiwick you make known to the said *S. J. S.* and *J. R.* that they be before our justices at *Westminster* on [the return] to shew if any thing they have, or know to say for themselves, *to wit*, to the said *S.* why the said 50 l. by him in form aforesaid acknowledged ought not to be made of his lands and chattels; to the said *J. S.* why the said 50 l. by him in form aforesaid acknowledged should not be made of his lands and chattels; and to the said *J. T.* why the said 100 l. by him in form aforesaid acknowledged should not be made of his lands and chattels, and be levied to the use and behoof of the said B. according to the form of the said recognizance, if it shall seem expedient to him; And have there the names of them by whom you shall make known to them, and this writ. Witness, &c.

Intrat. Scire  
Fieri & In-  
quir'.

Award of Fi.  
Fa. in debt  
for executors  
against an ex-  
ecutrix.

Cambridge, *to wit*, The sheriff was commanded, that of the goods and chattels which were of *Henry Cromwell, Esq;* deceased, lately called *Henry Cromwell of Wicken* in the county of *Cambridge, Esq;* in

in the hands of *Elizabeth Cromwell* late of *Spunny* in the county aforesaid, widow, executrix of the testament of the said *Henry* to be administered, being in his bailiwick, he should cause to be made as well a certain debt of 200*l.* which *Christopher Wynne*, Esq; and *Sarah* his wife, *Thomas Percival*, Gentleman, and *Mary* his wife, and *Thomas Balls*, Gentleman, which said *Sarah*, *Mary*, and *Thomas Balls*, were executors of the testament of *George Balls*, Gentleman, deceased, in the court of our lord *Charles* the second, late king of *England*, before the justices of the said late king at *Westminster*, recovered against the said *Elizabeth*, as 40*s.* which in the same court of the said late king were adjudged to the same *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for their damages which they had by occasion of the detaining that debt, to be levied of the same goods and chattels, if the said *Elizabeth* had so much thereof in her hands to be administered; and if she had not, then the said damages to be levied of the proper goods and chattels of the said *Elizabeth*; and that he should have that money here from the day of the holy *Trinity* in three weeks, to render to the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the debt and damages aforesaid, whereof the said *Elizabeth* is convicted. And now here at this day came the said *Christopher*

De bonis testatoris si, &c.

Si non, &c.  
Damna de bonis propriis.

*Return.**Damages le-  
wied de bonis  
propriis.**Nulla bona  
testatoris.**Devastavit  
suggested.*

and *Sarah, Thomas and Mary, and Thomas*, by *Richard Puppel* their attorney; And the sheriff now returns, that he, by virtue of the said writ to him directed, had caused the said 40 s. being the damages aforesaid, to be made of the proper goods and chattels of the said *Elizabeth*, which said 40 s. he has here at this day to render to the said *Christopher and Sarah, Thomas and Mary, and Thomas*, for the damages aforesaid; And the said sheriff further returns to the justices here, that there are no goods or chattels in his bailiwick which were of the said *Henry*, in the hands of the said *Elizabeth* to be administered, whereof he could cause to be made the said debt and damages, or any part thereof; And because the said return is conceived to be made in delay of the execution of the said judgment as to the debt aforesaid; and it is testified in the same court of the king here, on the behalf of the said *Christopher and Sarah, Thomas and Mary, and Thomas*, that the said *Elizabeth* has sold, elained, wasted, converted and disposed to her own proper use divers goods and chattels which were of the said *Henry* at the time of his death, and have come to the hands of the said *Elizabeth* to be administered, to the value of the debt aforesaid, to the intent that execution of the said debt might not be thereof made; and our said lord the king being unwilling that those things, which

which in the same court of the said late king were rightly acted and adjudged, should be rendered void by art or deceit; Therefore the sheriff is commanded, that *Fieri Facias* of the goods and chattels which were of the said *Henry* at the time of his death in the hands of the said *Elizabeth* to be administered, being in his bailiwick, he should cause to be made the said debt, if it may be thereof levied, and have the money thereof levied here, on [the return] to render to the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the debt aforesaid; And if the said debt cannot be levied in form aforesaid, then if it can appear to the same sheriff by inquisition on that behalf to be taken, upon the oath of good and lawful men of his bailiwick, or by any other method whereby he may be the better certified thereof, that the said *Elizabeth* has sold, elained, wasted or converted, and disposed to her own use, goods and chattels which were of the said *Henry* at the time of his death, and have come to the hands of the said *Elizabeth* to be administer'd, then by good, &c. he should make known to the said *Elizabeth*, that she be here at the time aforesaid, to shew, if, &c. why the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, ought not to have execution against her of the debt aforesaid, to be levied of the proper goods and chattels of the said *Elizabeth*, according to the form of the said recovery, if, &c.

*pro debito awarded.*

*Si debiti levare non possit tunc si constat per inquisitionem quod def. devast.*

*Sci. Fa.*

*Clift's Entr. 662.*

Like

Notice of executing Sci' fier. Inquir'.

Like notice must be given of executing a *Scire Fieri & Inquir.* as is given of trial, or of executing a writ of inquiry of damages.

Declaration on a Scire Facias upon a judgment recovered in the late k.'s reign against the deft. and his wife (since deceased) executrix.

Cooke.

Hilary ——— George the Second.

Middlesex, **I**T was commanded to the to wit, I sheriff, Whereas *W. F.* Esq; in the court of our late sovereign lord George the First, late king of Great Britain, &c. to wit, in *Easter* term in the 11th year of the reign of the said late king, before Sir *Peter King*, Knight, and his companions, then the said late king's justices of the Bench at *Westminster*, by the consideration of the said court had recovered against *C. M.* late of *Westminster* in the county of *Middlesex*, Esq; and the lady *E. M.* his wife, executrix of the testament and last will of *C. lord M.* her late husband, deceased, lately called *C. lord M.* as well a certain debt of 391*l.* as 50*s.* which in the said court of the said late king were adjudged to the said *W.* for his damages by occasion of the detaining that debt to be levied of the goods and chattels which were of the said *C. lord M.* at the time of his death in the hands of the said *C. M.* and lady *E. M.* to be administered, if they had so much in their hands; and if they had not, then the damages aforesaid to be levied of the proper goods and chattels of the said *C. M.* and lady *E. M.*

*E. M.* whereof they were convicted, as by the records and proceedings thereupon in the court of our lord the present king now here remaining manifestly appears; *Tet* execution of the said judgment still remains to be done, and the said lady *E. M.* is dead, as the king has heard from *Death of the wife.* the information of the said *W.* And because, &c. by good, &c. he should make *Dest. administrator of his wife, and administrator de bonis non, &c. of her testator.* known to the aforesaid *C. M.* administrator of the goods and chattels which were of the said lady *E. M.* and administrator, with the will of the said *C. lord M.* annexed, of the goods and chattels which were of the said *C. lord M.* at the time of his death, unadminister'd by the said lady *E. M.* that he should be here at this day, *to wit,* on the octave of the Purification of the Blessed *Mary*, to shew if any thing, &c. why the said *W.* ought not to have execution against him of the debt and damages aforesaid, of the goods and chattels which were of the said *C. lord M.* at the time of his death, being in the hands of the said *C. M.* to be administered, according to the form of the recovery aforesaid, if, &c. And now here at this day comes as well the said *W.* by *F. P.* his attorney, as the said *C. M.* summoned, &c. by *J. S.* his attorney; And the sheriff, *to wit,* *J. R.* Esq; and *T. C.* Esq; now return, that he, by virtue of the said writ to him directed by *R. H.* and *S. W.* good, &c. had made known to the said *C. M.* that he should be here at this day to shew  
in

in form aforesaid, &c. And upon this the said *W.* prays execution to be adjudged to him against the said *C. M.* of the debt and damages aforesaid, to be levied of the goods and chattels which were of the said *C. lord M.* at the time of his death not administered by the said lady *E. M.* in the hands of the said *C. M.*

*Plea.*

*No assets come to hands.*

And the said *C. M.* by *J. S.* his attorney comes and says, that the said *W.* ought not to have his execution against him of the debt and damages aforesaid, of the goods and chattels which were of the said *C. lord M.* at the time of his death, because he says no goods or chattels which were of the said *C. lord M.* at the time of his death not administered by the said lady *E. M.* at the time of the death of the said *E.* or at any time afterwards, have come to the hands of the said *C. M.* to be administered; and that he the said *C. M.* has not, nor on the day of suing forth the said writ, nor at any time afterwards, had any goods or chattels which were of the said *C. lord M.* at the time of his death in the hands of him the said *C. M.* to be administered, whereof he could have satisfied the said *W.* of the debt and damages aforesaid, or any parcel thereof: And this he is ready to verify: Wherefore he prays judgment, if the said *W.* ought to have his execution against him of the debt and damages aforesaid of the goods and chattels which were of the said *C. lord M.* at the time of his death.

And

And the said *W.* says, that he by any thing before alledged ought not to be barred from having his execution against the said *C. M.* for the debt and damages aforesaid, of the goods and chattels which were of the said *C. lord M.* at the time of his death, because, he says, that the said writ of the said *W.* was sued forth on the 24th day of *January* in the year of his present majesty's reign; and that the said *C. M.* on the said day of suing forth the said writ had diverse goods and chattels which were of the said *C. lord M.* at the time of his death in the hands of the said *C. M.* to be administered, to the value of the debt and damages aforesaid, wherewith he could have satisfied the said *W.* for the debt and damages aforesaid, *to wit*, at *Westminster* aforesaid; And this he prays may be inquired of by the county.

*Replication.*  
*Assets come to*  
*bands.*

Thomson.

Michaelmas ——— George the  
*Second.*

London, **I**T was commanded to the she-  
*to wit*, *riffs*, Whereas *M. G.* widow, and *N. V.* lately in the court of our lord the present king here, before the justices of our lord the present king of the Bench here, *to wit*, at *Westminster*, by the judgment of the said court had recovered against *K. M.* late of *London*, widow, executrix of the testament and last will of *H. M.* late of *London*, Esq; her late husband

*Declaration on*  
*a Sci. Fa upon*  
*a judgment for*  
*assets in futuro*  
*against an exe-*  
*cutrix.*

band deceased, 1480 l. for their damages which they had sustained, as well by occasion of the not performing certain promises and undertakings made by the said *H.* in his life-time to the said *M.* and *N.* in *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, as for their costs and charges by them the said *M.* and *N.* about their suit in that behalf expended, adjudged to the said *M.* and *N.* by the said court of our said lord the king, before the justices of our said lord the king at *Westminster*, to be levied of the goods and chattels which were of the said *H.* at the time of his death, which after the giving the said judgment should come to the hands of the said *K.* to be administered, whereof she was convicted, as by the record and proceedings thereupon remaining in the said court of our said lord the king before the justices of our said lord the king here, to wit, at *Westminster* aforesaid manifestly appears. And whereas after the said judgment was given, diverse goods and chattels which were of the said *H.* at the time of his death, to the value of the damages aforesaid and above, have come to the hands of the said *K.* to be administered, out of which she could have satisfied the said *M.* and *H.* of their damages aforesaid, as the king has been given to understand by the information of the said *M.* and *N.* And because, &c. that by good, &c. they should give notice to the aforesaid *K.* that she might be here at this day, to wit, on the

*Suggestion of  
assets since  
come to deft's  
hands.*

the morrow of St. *Martin*, to shew if any thing, &c. why the said *M.* and *N.* ought not to have execution against her of the damages aforesaid of the goods and chattels which were of the said *H.* at the time of his death, which after the said judgment was given have come to the hands of the said *K.* to be administered, according to the form and effect of the recovery, if, &c. And now here at this day came *Def.* appears: as well the said *M.* and *N.* by *J. H.* their attorney, as the said *K.* by *J. S.* her attorney; and the said *M.* and *N.* offered themselves on the 4th day against the said *K.* of the plea aforesaid; And the *Sheriffs* now returned, that by *J. N.* and *Scire Fec.* *R. R.* good, &c. they had given notice to the said *K. M.* to be here at this day, to shew, &c. and upon this the said *M.* and *N.* pray execution against the said *K.* of the damages aforesaid, of the goods and chattels which were of the said *H.* at the time of his death, which after the said judgment was given have come to the hands of the said *K.* to be administered, to be adjudged to them, &c. Upon which the said *K.* says, that after the said judgment was given, no goods or chattels which were of the said *H.* at the time of his death, have come to the hands of the said *K.* to be administered, whereof she could have satisfied the said *M.* and *N.* of their damages aforesaid, or of any parcel thereof; And of this she puts herself upon the country; And the said *M.* and *H.* likewise: There- *Def.* pleads no assets come to hand.

*Issue.*

Therefore the sheriffs are commanded, that they cause to come here twelve, &c. By whom, &c. And who neither, &c. To recognise, &c. Because as well, &c.

You enter the writ of *Scire facias* and *Alias*, if any, on the prothonotary's remembrance roll, and give a rule thereon for the defendant to appear.

*No costs on Sci. Fa. till plea.*

The plaintiff on motion in the treasury may quash his own *Scire facias* without paying costs, though the defendant has appeared; for the practice of the court is, that no costs shall be paid on proceedings by *Scire facias* till a declaration be delivered, and the defendant has pleaded.

*Term of the judgment not necessary.*

In a *Scire facias* to revive a judgment it is not necessary to insert the particular term in which the judgment was given.

At common law, if after judgment the plaintiff sued not execution within the year, he had no remedy, but by an action on the judgment; but a *Scire facias* in personal actions is given by the statute of *Westminster 2. c. 45. 2 Inst. 469, 470. vide Salk. 600.*

*Where no Sci. Fa. if a Cesset Execut.'*

If there be a *Cesset Executio* for a year, the plaintiff may within the next year take out execution without a *Scire facias*.

*Scire Facias must be sued out tho' execution stayed by injunction.*

If the plaintiff be delayed from taking out execution within the year and a day by an injunction out of *Chancery*, he cannot after the injunction dissolved take out execution without reviving the judgment by *Scire facias*; but it will be no breach of the injunction to take out execution within

within the year, so as it be not executed, which will save the trouble of bringing a *Scire facias*, by continuing the execution on the roll by *Vic' non misit breve*. 6 Mod. 288.

Execution by default was awarded on a *Scire facias* upon a judgment in debt, and the defendant four years afterwards being in the Fleet for another cause was brought into court by *Habeas Corpus*, where he admitting himself to be the same person was committed in execution *Moraturus quousque* — *Nota post Annum & Diem absq; novo Scire Facias*. Dyer 214. p. 47.

If a man recovers debt or damages by judgment, and the defendant dies, no execution lies against his executor without a *Scire facias*.

If a man has judgment for debt or damages, and dies before execution, his executor shall not have execution, tho' it be within the year, without a *Scire facias*.

*Vide antea, fol. 324.* Death of either party after interlocutory judgment, and before final judgment.

If there be two plaintiffs in a personal action, and one of them dies, that shall not put the other to a *Scire facias*; so if one of the defendants die. *Far. 68. Moor 367. pl. 503. Noy 150. 5 Mod. 339.* but a suggestion of the death must be made on record. *Salk. 319.*

On a judgment wherein the action was laid in Cumberland a *Scire* was brought in Westmoreland, and judgment was had there.

*Def. charged in execution 4 years after judgment without Sci. Fa.*

*On death of def.*

*Or of plt. Sci. Fa. must issue.*

*But not on death of one where there are many pls. or defendants.*

*Into what county Sci. Fa. on a judgment must issue.*

on; but that judgment was reversed on error in the *Exchequer* chamber, for a *Scire facias* must be brought in the same county where the first action was laid. *Hob. 4. 3 Cro. 228, & vide Tel. 218. S. C.* for the diversity between a *Scire facias* on a judgment, and an action of debt on a judgment.

Into what  
county on a re-  
cognizance.

If a recognizance of bail be taken before a judge at his chambers in London, and entered on record as taken in London, it was resolved by all the prothonotaries, that the *Scire facias* should be directed to the sheriffs of London, and not to the sheriff of *Middlesex*. *5 Mar. Brook, Liten, 85.* though the recognizance is not a perfect record till it be entered upon the roll; yet when it is entered, it is a record from the first acknowledgment, and binds persons and lands from that time; for it is the acknowledgment before the judge that gives it the force of a record, though the enrolment be necessary for the testification and perpetuity of it. *Hob. 195.* But in the case of *Andrews and Harborne* the prothonotaries certified, that upon such recognizance the *Scire facias* might be brought in *Middlesex*, or in London; and that it used to be brought either in London or *Middlesex*. *1 Roll. Abr. 891. All. 12.* So where bail taken by commissioners in the county of *Tork*, a *Scire facias* lies against them either in the county of *Tork* or *Middlesex*. *2 Lutw. 1287. Vide Salk. 564, 600, 659.*

Out-

Outlawry.

IN the following actions, viz. Trespass, assault, case, covenant, account, debt, detinue and replevin, you may proceed to outlaw a man who is not easily to be arrested, and hath not sufficient estate in the county whereby he may be summoned; &c.

If the action be laid in *London*, the defendant will be sooner outlawed than in another county, in regard that between the teste and return of the exigent there must be five county days, which are held every month, and the *Hustings* in *London*, which answer the county days, are held every fortnight.

*Def. sooner outlawed in London than in another county.*

You cannot outlaw a man on process with *Acetiams*; and if your original be only a *Clansum fregit*, the defendant may reverse the outlawry without bail, and therefore the best way is to make out a *Præcipe* for a special original, which is in this form, according to the nature of the action.

*Of the Præcipe for the original.*

*London*, If *T. J.* shall make, &c. then put, &c. *C. W.* late of *New Bond-street* in the county of *Middlesex*, Upholsterer, that he be before our justices, at *Westminster*, on the morrow of the Purification of the Blessed *Mary*, to shew, Wherefore whereas the said *C.* on the 10th day of *August* in the year of our Lord 1738. at *London*, to

*A Præcipe for a special original on an Indeb. Assumpsit for the charges of a funeral.*

wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, was indebted to the said *T.* in 60*l.* lawful money of *Great Britain*, as well for work, labour and care of the said *T.* about the funeral of one *R. F.* deceased, by the said *T.* before that time, at the special instance and request of the said *C.* done and performed, as for diverse materials and necessary things, by the said *T.* at the like special instance and request of the said *C.* at the costs and charges of the said *T.* on that occasion found and provided; and by the said *T.* in and about that funeral used and expended; and being so indebted the said *C.* in consideration thereof afterwards, *to wit*, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *T.* that he the said *C.* would well and truly pay to the said *T.* the said 60*l.* when he should be thereunto afterwards required. *And also whereas* the said *C.* afterwards, *to wit*, on the day and year abovesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *T.* at the like special instance and request of the said *C.* had done and performed other work and labour in and about the funeral of one *R. F.* deceased, and at the like special instance and request of the said *C.* had found and provided at the costs and charges of him the said *T.* diverse materials and necessary things on that occasion, and had expended

Quantum meruit thereon.

expended and used the said materials and necessary things last mentioned in and about the last mentioned funeral, undertook, and then and there faithfully promised the said *T.* that he the said *C.* would when he should be thereunto required, well and truly pay and content to the said *T.* not only all such sums of money as the said *T.* reasonably deserved to have for his said work and labour last above mentioned, but also all such sums of money, as the said materials and necessary things last mentioned at the time of the finding and providing thereof, as aforesaid, were reasonably worth; And the said *T.* avers, that he reasonably deserved to have for his last mentioned work and labour 20*l.* of like lawful money; And that the materials and necessary things last mentioned were at the time of the finding and providing thereof, as aforesaid, reasonably worth 40*l.* of like lawful money, *to wit*, at *London* aforesaid, in the parish and ward aforesaid, of which the said *C.* then and there had notice: *Nevertheless* the said *C.* no ways regarding *Breach.* his said promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *T.* in this behalf, has not paid to the said *T.* the said several sums of money, or any part thereof, nor any ways contented him for the same (although the said *C.* afterwards, *to wit*, on the 12th day of *August* in the year aforesaid, at *London* aforesaid, in the

A a 3                      parish

parish and ward afore said, was thereunto requested by the said T.) But he hath hitherto refused, and still doth refuse to pay the same to the said T. to the damage of the said T. of 60 l. as he says.

Returnable, &c.

You carry this *Præcipe* to the Curfitor of the county, who will thereupon make out an original: If the *Præcipe* be carried to the curfitor before the effoin-day of a term, he will make the original returnable on any return of the precedent term, *vide antea*, fol. 199. You may return the original of course thus:

*Of returning  
the original.*

Pledges of prosecuting } *John Doe,*  
 } *Richard Roe.*

The within named C. W. has nothing in our bailiwick by which he can be attached [or \* summoned.]

J. B. Esq; }  
and } Sheriffs.  
W. W. Esq; }

*Of making out  
the Capias,  
Alias and  
Pluries.*

You must carry the original thus returned to the filacer of the county, who will make out a *Capias*, *Alias* and *Pluries* all together, if the original will bear it, each of which writs must have 15 days between the teste and return. After the

\* *Vide antea*, fol. 95, 96, 200.

*Capias*

*Capias*, *Alias* and *Pluries* are sealed, you may return them severally, after this manner:

The within named C. W. is not found *Of returning them.*  
in our bailiwick.

The answer of

J. B. Esq; }  
and } Sheriffs.  
W. W. Esq; }

I apprehend the plaintiff ought to make an affidavit of his debt on suing out the *Capias*, and endeavour to get the *Capias*, *Alias* and *Pluries* executed, if possible, and let them be returned by the sheriff.

Every attorney shall file his warrant of *Warrant of*  
attorney of the term wherein any *Exigent* *attorney to be*  
is awarded, upon pain of 40 s. for every *filed of the same*  
time he offends, and is attainted by due *term with the*  
examination of the justices of this court; *exigent.*  
such warrant to be filed upon or before  
the effoin-day of every *Trinity* term, and  
within 21 days after the end of every  
other term. *Hil. 14, 15 Car. 2.*

No exigenter shall receive any *Pluries* *Exigenter not*  
*Capias* in order to make an exigent or pro- *to receive Plu-*  
clamation thereon, before the same be *ries before sign-*  
signed or stamped by the clerk of the war- *ed by clerk of*  
rants, or his deputy, to the end it may *the warrants.*  
appear, that the warrant of attorney there-  
in is duly filed. *Hil 2, 3 Jac. 2.*

A a 4

Trinity

Trinity Term in the Thirteenth  
Year of the Reign of King  
George the Second.

*The warrant  
of attorney.*

London. *T. J.* puts in his place *L. R.* his  
attorney against *C. W.* late of  
*New Bond-street* in the county of *Middle-*  
*sex*, Upholsterer, in a plea of trespass on  
the case.

*Exigenter, on  
receipt of the  
Pluries stamp,  
to make out the  
exigent and  
proclamation.*

This warrant of attorney being filed,  
for which you pay 4*d.* the clerk of the  
warrants stamps the *Pluries*, which you  
thereupon carry to the exigenter of the  
county, who will make out an exigent  
and proclamation, which you are to get  
sealed, and carry to the sheriff of the  
county in which you have laid the action,  
and the proclamation to the sheriff of that  
county wherein the defendant dwells at  
the time of awarding the exigent.

*Where an Al-  
locatus neces-  
sary.*

If there happen not to be five county  
days between the teste and return of the  
exigent, you must apply to the exigenter  
for an *Allocatur* to bring in the five coun-  
ty days; and the like must be in *London*  
for want of *Hustings*.

*When an exi-  
gent is award-  
ed, a procla-  
mation to be  
made out of  
the same teste  
and return.*

You may make out your process in or-  
der, and endeavour to take the defendant  
on any of them.

Where any exigent shall be awarded,  
a writ of proclamation shall be made out  
of the same teste and return as the writ  
of exigent directed to the sheriff of the  
county

county where the defendant at the time of the exigent awarded shall be dwelling, which writ of proclamation shall contain the effect of the same action; and the sheriff to whom the proclamation shall be directed shall make three proclamations, *Sheriff to make three proclamations.* viz. one in open county court, one other at the general quarter-sessions of the peace in those parts, where the defendant at the time of the exigent awarded shall be dwelling; and one other one month at least before the *Quint. Exact*, by virtue of the writ of exigent, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling at the time of the exigent so awarded; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid of the parish next adjoining to the defendant's dwelling, and upon a *Sunday* immediately after divine service. All outlawries pronounced, and no proclamation awarded and returned, according to this statute, are void. — *Stat.*

31 *Eliz. c. 3. §. 1.*

The sheriff for making the proclamation *His fee.* at or near the church door, shall have *12 d. Same Stat. §. 1.*

The officer in whose office the exigent shall be taken shall make out the proclamation, and shall take no more for making such writ of proclamation, and entering it on record, but only 6 d. *Officer who makes out the exigent to make out the proclamation. Stat. 6 Hen. 8. His fee.*

c. 4. §. 3, 4.

Accord-

*Attornies to be careful that writs of proclamation be delivered.*

According to the provision of the statute of the 31 *Eliz.* all attornies are to be careful that writs of proclamation be delivered, and the sheriffs to take care duly to execute the same. *Mich. 1654.*

*Proclamation to be filed with the Custos Brevium.*

After the exigent and proclamation is returned, you file the proclamation with the *Custos Brevium*, and carry the exigent to the clerk of the outlawries, who will thereupon make out a *Capias Utlagatum* either general or special, the one against the defendant's body, the other against his body, goods and lands, into as many counties as you shall think proper either in *England* or *Wales*.

*Capias Utlagatum either general or special.*

*If deft. appears on the exigent, no bail is required.*

If the defendant appears by *Supersedeas* *quia improvidè*, or doth truly render himself upon the exigent, no bail is required. *Mich. 1654.*

*Sheriff not to discharge deft. arrested on Capias Utlagatum without a Supersedeas.*

No sheriff, under-sheriff, their deputies or bailiffs, shall set at liberty any person arrested upon any *Capias Utlagatum*, until he receive a *Supersedeas* according to law from the officer thereunto appointed. *Mich. 1654. Stat. 13 Car. 2. c. 2. §. 4.*

No sheriff, under-sheriff, &c. shall set at liberty any person taken upon any writ of *Capias Utlagatum*, nor discharge the lands or goods of any person outlawed, without a lawful *Supersedeas* under the seal of the court. *Hil. 15, 16 Car. 2.*

Upon affidavit made and filed, that any sheriff, officer, or bailiff, has enlarged any person arrested upon *Capias Utlagatum* before judgment, without a lawful *Super-*

*Supersedeas* in that behalf, the person so offending shall pay 40 s. to the party <sup>Penalty of</sup> 40 s. &c. <sup>grieved,</sup> who shall have an attachment of course against such sheriff, officer, bailiff, or party offending, for payment of the same; and the party offending shall likewise undergo such other punishment as by the court shall be thought fit. *Trin. 2 Jac. 2.*

Before the reversing of any outlawry, or any *Supersedeas* made thereunto, the defendant shall give special bail, if the sum or damages expressed in the original, whereupon the exigent was awarded, shall amount to the sum of 10 l. or upwards. *Hil. 15, 16 Car. 2. Trin. 2 Jac. 2.*

Before any allowance of any writ of error, or reversing of any outlawry be had, by plea or otherwise, through or by want of any proclamation to be had or made according to this statute, the defendant in the original action shall put in bail, not only to appear and answer the plaintiff in the former suit in a new action, to be commenced for the cause in the first action, but also to satisfy the condemnation if the plaintiff shall begin his suit before the end of \* two terms next after the allowing the writ of error, or otherwise avoiding the said outlawry. *Stat. 31 Eliz. c. 3. f. 3. Mich. 12 Geo. 1. the rule says of*

\* the term next after, &c. No outlawry after the death of the plaintiff in the action shall be reversed, without the defendant's appearing and putting in special bail (if the action requires for.

*Before Super-  
sedeas Des't.  
to give bail if  
the cause of  
action be 10 l.  
or upwards.*

*Des't. to give  
bail to satisfy  
the condemna-  
tion.*

*Outlawry af-  
ter the death  
of the plain-  
tiff not to be  
reversed  
without bail  
to the execu-  
tor.*

quires it) to the executor or administrator of the plaintiff, or to the husband and wife, where the wife while a *Feme* sole sued the defendant to an outlawry before marriage, provided that the defendant's attorney do, within 14 days after notice given of the defendant's intention to reverse the outlawry, deliver the name of the executor or administrator of such deceased plaintiff to the proper prothonotary. *Trin. 2 Jac. 2.*

*On reversing an outlawry Deft. only to pay costs to the Exigent, and the Fine.*

*Further costs respited quousque.*

*No Superseas to the Exigent, unless put in before the day of appearance, to be allowed till costs paid.*

*On Reversal Deft. shall pay costs to the Exigent.*

No defendant, who shall be outlawed and shall appear and reverse such outlawry, shall upon the reversal pay to the plaintiff any sum of money exceeding the usual costs of the *Exigent*, together with the fine paid to the king upon the original, and all further costs shall be respited to the time of signing judgment for the plaintiff. *Trin. 33 Car. 2.*

Upon every writ of *Exigent*, if a *Superseas* be not put in thereto, at or before the day of appearance thereof, no *Superseas* shall by any sheriff be allowed to any such writ, until the defendant shall have paid unto the plaintiff or his attorney, or left in the court with one of the prothonotaries thereof, the full and just costs of suit therein; and upon the reversal of any outlawry the defendant shall, before the reversal or any *Superseas*, pay to the plaintiff or his attorney, or leave in the court for him, the full costs of suit to the *Exigent*. And where the sheriff shall have taken an inquisition, and extended

tended the goods, chattels, &c. and returned the same into the *Exchequer*, such further costs shall be taxed by the prothonotary, and paid to the plaintiff or his attorney, or left in the court for him, as the plaintiff hath been at in prosecuting the said inquisition, before any certificate of the reversal shall be made by the clerk of the outlawries. *Trin. 2 Jac. 2.*

*Where inquisition taken, &c. further costs to be taxed.*

On making out a *Supersedeas* the defendant need not enter an appearance with the Exigenter; the *Supersedeas* itself is an appearance. *Dyer 233.*

Every defendant who shall be outlawed, and cause the said outlawry to be reversed, if the plaintiff thereupon shall not proceed within two terms next after notice of reversing thereof, shall have costs to be taxed by the prothonocary. *Trin. 33 Car. 2.*

*On reversing an outlawry, if Plt. proceed not in two terms Def. to have costs taxed.*

A man may be outlawed after judgment, and that without any writ of *Alias*, *Pluries*, or proclamation. In this case you

*Of outlawing after judgment.*

sue out a writ of *Capias ad satisfaciendum*, which must have 15 days between the teste and return; and if the defendant cannot be taken thereon, you get the sheriff to return *Non est inventus* on the writ, and then carry it to the exigenter, who will make out a writ of *Exigent*, against the defendant, upon the return of which you may have a *Capias Utlagatum*, either general or special, and into as many counties as you please, either in *England* or *Wales*; and if the defendant's body be taken, or his goods extended thereon, he can

can obtain no discharge for either till he has made satisfaction.

*No outlawry  
after judgment,  
pending a writ of error.*

But if a writ of error be brought on the judgment, the plaintiff cannot proceed to outlaw the defendant pending the writ of error; for though the plaintiff may bring an action of debt on the judgment pending a writ of error, and proceed to judgment thereon, it has always been confined to restraining the plaintiff from taking out execution, and the *Exigent* being founded on the *Capias ad satisfaciendum* is a proceeding to execution, and therefore not justifiable.

It much behoves practisers to be cautious when they outlaw, for if the defendant appears publicly, and the attorney can be affected with the knowledge of it, the court will, I apprehend, make him reverse it at his own charge, if not otherwise punish him.

*Of procuring  
the money le-  
vied on the  
Defi's goods.*

Where the defendant's goods are taken on the special *Capias Utlagatum*, the sheriff, if the plaintiff requires it, will extend and appraise the goods by inquisition, and for that purpose the plaintiff must first have them inventoried and appraised by proper persons, to give evidence of their value to the jury; if they are not worth above 40*l.* they will hardly be worth the plaintiff's trouble to extend them. In *Middlesex* the sheriff takes for the inquisition as follows:

# in the Court of Common Pleas.

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	l.	s.	d.	l.	s.	d.
For taking the inquisition, schedule of the goods seized, and return —————				0	18	6
To the bailiff for summoning the jury —				0	4	0
For the use of the room where the inquisition is taken —————				0	1	0
To every juryman 1 s. —				0	12	0
				0	17	0
				1	15	6

It may be proper to give the defendant notice of taking the inquisition, as is done of executing a writ of inquiry.

If there be occasion, a *Subpoena* for witnesses may be made out in the following form.

GEORGE, &c. To A. B. &c. greeting. We command you, and every of you, that all excuses being laid aside, you be in your proper persons before the sheriff of our county of *Middlesex* on — the — day of — at — of the clock in the — noon at the court-house at *Westminster* [or at the *Three tons* in *Brook-street* near *Holborn*] in the county of *Middlesex*, to testify and declare the truth according to your knowledge, upon a certain inquisition to be taken by the said sheriff, on the oath of good and lawful men of his county, pursuant to our precept

*The Attorney's Practice*

cept to inquire what lands and tenements, goods and chattels *W. S.* late of, &c. was possessed of on the — day of — in the year of our Lord —, on which day he was outlawed at the suit of *R. R.* And this you, either or any of you, are not to omit, under the penalty of 100 *l.* for the default of each of you. Witness, &c.

When the *Capias Utlagatum*, is return'd with the inquisition annexed, it must be carried to the clerk of the outlawries, who will transcribe, and transmit it into the *Exchequer*; then a clerk in the king's remembrancer's office must be employed, who will sue out a writ of *Venditioni exponas*, by virtue of which the sheriff will sell the goods. If the money raised exceeds not 20 *l.* the court of *Exchequer*, on motion, will order the money to be paid to the plaintiff; but if the money be above 20 *l.* a petition to the following effect must be presented to the lords of the treasury.

*To the Right Honourable the Lords Commissioners of His Majesty's Treasury.*

*The humble petition of R. R.*

*Sheweth,*

*Petition to the lords of the treasury.*

**T**HAT *W. S.* late of, &c. being indebted to your petitioner in the sum of 50 *l.* your petitioner did in November last,

last, at his very great charge, prosecute the said *W. S.* to an outlawry; and by virtue of a special *Capias Utlagatum* directed to the sheriff of *Middlesex*, several goods of the said *W. S.* were seized, and found by inquisition to be of the value of 45 *l.* which goods were afterwards sold by the said sheriff, by virtue of a writ of *Venditioni exponas*, at the same price and value they were so appraised at, and the money thereupon raised now remains in the hands of the sheriff of *Middlesex*.

That your petitioner's said debt, and the charge he has already been at in prosecuting the said outlawry, greatly exceed the sum so remaining in the said sheriff's hands.

Wherefore your petitioner humbly prays your lordships, that the money so levied as aforesaid may be paid over to your petitioner.

*And your petitioner shall ever pray, &c.*

This petition the lords of the treasury will refer to their solicitor, now *John Sharpe*, Esq; The plaintiff must make an affidavit before one of the barons of the *Exchequer*, to support the allegations in the petition, particularly of his debt and the charge he has been at. This affidavit, with the attorney's bill, *Venditioni exponas* and return, must be laid before the solicitor of the treasury, who being satisfied of the truth of the petition will make a re-

port to their lordships accordingly, and then a warrant will issue to his majesty's attorney general, to consent that so much of the money levied as shall remain in the hands of the sheriff, after deducting the usual poundage, be paid to the plaintiff, towards satisfaction of his debt and costs, on his moving the court of *Exchequer* for an order for that purpose; this warrant must be delivered to the attorney general, who on the plaintiff's making such motion by counsel, will consent accordingly, and then, on producing the order under seal, the sheriff will pay the money to the plaintiff.

*The expence out of pocket of this application.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Duty and oath of the affidavit	0	2	0
To the solicitor of the treasury	1	1	0
To his clerk	0	5	0
At the treasury, for the reference, &c. warrant and poundage, when the sum does not exceed 50 <i>l.</i> you pay about	3	3	0
To the attorney general	2	2	0
To his clerk	0	2	6
Fee to the counsel to move	0	10	6
To the clerk in the <i>Exchequer</i> according to the length of the proceedings, about	5	10	0

Of writs of error.

WHERE a party apprehends himself grieved by the judgment of this court, he may remove the same by a writ of error into the *King's Bench*. This writ is made out by the cursitor for the county wherein the action is laid; and is in this form :

GEORGE the Second, by the grace <sup>A writ of</sup> of God, of Great Britain, France and Ire-<sup>error.</sup> land, King, defender of the faith, &c. To his trusty and well-beloved Sir Thomas Reeve, Knight, chief justice of the bench, greeting. Forasmuch as in the record and process, and also in giving of judgment, in a plaint which was in our court before you and your associates, our justices of the said bench, by bill between William Norman and Samuel Burrough, gent. one of the attornies of our court of the bench, of a certain trespass upon the case done to the said William by the said Samuel, as it is said, manifest error hath intervened, to the great damage of the said Samuel, as by his complaint we are informed, We, willing that the said error, if any be, be duly amended, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given thereupon, then you send to us distinctly and plainly under your seal,

seal, the record and process of the said plaint, with all things touching the same, and this writ; so that we may have them on the octave of *St. Hilary*, wheresoever we shall then be in *England*; that inspecting the record and process aforesaid, we may cause farther to be done thereupon for amending the said error, as of right, and according to the law and custom of *England*, shall be meet to be done. Witness *Caroline*, Queen of *Great Britain*, &c. Guardian of the same realm, &c. at *Westminster*, the 26th day of *November* in the 10th year of our reign. *Burgh.*

*Of allowing it.* You pay for this writ 13 s. viz. 2 s. 6 d. the curfitor's fee and seal, and 10 s. 6 d. the king's duty. You carry this to the clerk of the errors to be allowed, for which you pay 2 l. 2 s. 6 d. whereupon he gives you a note directed to the attorney of the adverse party, signifying his allowance of the writ, which notice you must deliver accordingly.

*Writ of error* No execution shall be stayed upon any writ of error, or *Supersedeas* thereupon to be sued for the reversing of any judgment given in any action, or bill of debt, upon any single bond for debt, or upon any obligation, with condition for the payment of money only, debt for rent, money only; or upon any action or bill of debt for rent, or upon any contract, unless such person in whose name such writ of error shall be brought, with two sufficient sureties, such as the court (wherein such judgment

*no Supersedeas*  
*on any single*  
*bond for debt,*  
*bond condition-*  
*ed for payment*  
*of money only,*  
*debt for rent,*  
*or on any con-*  
*tract.*  
*Unless bail put*  
*in.*

judgment is given) shall allow of, shall first before such stay made, or *Supersedeas* awarded, be bound unto the party for whom such judgment is given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said former judgment, *To prosecute to prosecute the said writ of error with effect.* effect; and also to pay (if the said judgment be affirmed) the debt, damages and *Pay the debt, &c.* costs adjudged upon the former judgment; and all costs and damages to be awarded *And costs for delay of execution.* for the same delaying of execution. *Stat. tion.*  
 3 *Fac. 1. c. 8.*

And no execution shall be stayed by any writ of error, or *Supersedeas* thereupon, *Writ of error no Supersedeas* after any verdict and judgment thereupon obtained in any action of debt, on statute 2 *Edw. 6.* for not setting forth of tithes, *after verdict. On action on Stat. 2 Ed. 6.* nor in any action upon the Case, upon any promise for payment of money, action sur trover, action of covenant, detinue and trespass, unless such recognizance, and in such manner, as by the said act 3 *Fac. 1.* is directed, shall be acknowledged in the said court where such judgment is given. The *promise for payment of money, trover, covenant, detinue and trespass. Unless bail as aforesaid.*  
 second *Stat. 13 Car. 2. c. 2. §. 8, 9.*

And if any person shall sue or prosecute any writ of error for reversal of any judgment whatsoever given after any verdict, and the said judgment shall be affirmed, then such person shall pay unto the defendant in the said writ of error his double costs, to be assessed by the court where the writ of error shall be depending, for

the delaying of execution. *Same Statute, §. 10.*

*Writ of error  
no Superfedeas  
after verdict  
in any action  
personal,  
Unless bail as  
afore said.*

*Nor after ver-  
dict in dower  
or ejectment.*

*Unless plt. in  
error be bound,  
&c.*

*On affirmance,  
discontinuance  
or nonsuit, to  
pay costs.*

*On affirmance,  
&c. writ to  
inquire of the  
mesne profits,  
&c.*

And no execution shall be stayed by writ of error, or *Superfedeas* thereupon, after verdict and judgment thereupon, in any action personal whatsoever, unless a recognizance with condition, according to the Statute 3 Jac. 1. shall be first acknowledged in the court where the judgment shall be given. In writs of error brought upon any judgment after verdict in any writ of dower, or in any action of *ejectione firmæ*, no execution shall be stayed, unless the plaintiff in such writ of error shall be bound unto the defendant in such writ of dower, or action of *ejectione firmæ*, in such reasonable sum as the court to which such writ of error shall be directed, shall think fit, with condition that if the judgment shall be affirmed, or that the said writ of error be discontinued in default of the plaintiff therein, or that the said plaintiff be nonsuit in such writ of error, that then the plaintiff shall pay such costs, damages, and sum and sums of money, as shall be awarded upon such judgment affirmed, discontinuance or nonsuit had. Stat. 16, 17 Car. 2. c. 8. §. 3.

The court, wherein such execution ought to be granted upon such affirmance, discontinuance or nonsuit, shall issue a writ to inquire, as well of the mesne profits, as of the damages by any waste committed after the first judgment in dower or *Ejectione firmæ*; and upon the return thereof,

thereof, judgment shall be given and execution awarded for such mesne profits and damages, and also for costs of suit. *Same*

*Stat. §. 4*

This act not to extend to any writ of error to be brought by any executor or administrator, nor to any action popular, nor to any action upon any penal law or statute (except action of debt for not setting forth of tithes) nor to any indictment, presentment, inquisition, information or appeal. *Same Stat. §. 5.*

*This act not to extend to executors, &c.*

*Penal statutes, &c.*

*Nor indictment, &c.*

Judgment in debt on a bond conditioned for the performance of covenants, but notwithstanding the condition did not appear on the record, the court held, that the matter of bail being examinable by affidavit, and the bond being conditioned as above, bail was not required on the writ of error. *Spinks and Bird, Mich.*

*No bail in error on bond for performance of covenants, though condition did not appear on record.*

*10 Geo. 2.*

Judgment in debt on bond conditioned for payment of 300 l. mentioned in a surrender in mortgage of copyhold lands; writ of error brought, and bail ordered. *Wood and Armstrong, Mich. 12 Geo. 2.*

*Bail in error on judgment upon bond for payment of money mentioned in a mortgage.*

No attorney shall make out any execution *Non obstante brevi de errore* until he has had a certificate from the clerk of the errors, that the record is not removed, and a *Non Pros* thereupon duly signed. *Trin. 28 Car. 2.*

*No execution Non obstante errore, without certificate of Non Pros signed.*

All writs of error shall be forthwith delivered to the clerk of the errors for the time

*Writ of error to be delivered to the clerk of the errors.*

*And till then  
no stay of exe-  
cution.*

time being; and no one shall be obliged to forbear suing out execution by pretence of any writ of error, before the writ of error shall be delivered to the clerk of the errors. *Same Rule, and Mich. 28 Car. 2.*

*Where bail  
required, bail  
to be put in 4  
days.*

And in cases where special bail is required, unless the plaintiff on such writ of error shall, within four days after the delivery thereof, put in bail according to law, and obtain a writ of *Superfedeas* thereon, the defendant may proceed to execution notwithstanding such writ of error. *Mich. 28 Car. 2.*

*Aliter execu-  
tion.*

*Bail to be  
perfected in 4  
days after  
exception.*

In all cases where bail shall be filed on writs of error, such bail shall likewise be perfected within four days after exception taken thereto; or in default thereof the clerk of the errors shall *Non Pros* such writ of error. *Mich. 6 Geo. 2.*

*No execution  
for not tran-  
scribing with-  
out certificate.*

After a writ of error shall be duly allowed, and a *Superfedeas* thereupon obtained, no execution shall be made for not transcribing the record into the *King's Bench* without a certificate in writing by the clerk of the errors, that the plaintiff in such writ of error made default in transcribing the record into the *King's Bench*, according to a rule of court to be first given of course. *Mich. 28 Car. 2.*

*Execution af-  
ter error, tho'  
before notice  
void.*

An execution sued out after a writ of error allowed is void, whether the party have notice of the writ of error or not; but if he have not notice of it, he is not punish-

punishable for a contempt, though restitution ought to be made. *Smith v. Cave*, 3 Lev. 312.

After a writ of error brought on a *Debt on judgment* in this court, an action of debt *ment after error.* may be brought upon the judgment pending the writ of error; but then the plaintiff ought to declare on the whole matter, viz. of the judgment in this court, of the removal by writ of error, and that the judgment is still in full force, *prout patet per record inde in Banco regis. Gale v. Till*, 3 Lev. 396. *V. antea fol. 62, 93.*

If an action of debt be brought on a *Debt on judgment pending a writ of error in the original action*, the plaintiff may proceed *error, plt. may proceed to judgment, but can't have execution till the writ of error be determined. but can't have execution if deft. applies.* *Coe and Allam, Trin. 9 Geo. 1. Jackson and Duckett, Hil. 13 Geo. 1.* But the plaintiff may take out execution notwithstanding the writ of error, if the defendant does not apply to the court to stay execution. *Humphreys and Daniel, Pas. 9 Geo. 2.* The plaintiff, pending a writ of error, cannot have an *Exigent post Ca. Sa.* on the original judgment. *Spinks and Bird, Pas. 10 Geo. 2.*

If a writ of error be brought on a *Debt on recognition*, and the plaintiff brings an action of debt on the recognizance against bail, the bail in the original action, pending *pending error, proceedings, stayed.* the writ of error, the court will stay the proceedings till the writ of error is deter-

determined; for if the plaintiff might proceed to judgment against the bail, they would be thereby deprived of an opportunity of surrendering the defendant.

*Newman and Butterworth, Hil. 8 Geo. 2.*

*If writ of error abates by death of chief justice, execution with leave of the court.*

If a writ of error be brought on a judgment in this court, and the chief justice dies [before he has returned the writ of error] whereby the writ is abated, execution may be taken out with leave of the court; but if taken out without leave it will be set aside, and restitution ordered.

*Cranborne and Quenel, Thornton and Hays, Hil. 9 Geo. 2.*

*Of transcribing.*

At the return of the writ of error a rule must be given with the clerk of the errors, by the defendant in error, for the plaintiff to transcribe the writ of error into the *King's Bench*, which rule will be out in 8 days after service thereof on the plaintiff in error, or his attorney; and if the record be not transcribed in 8 days, the clerk of the errors will sign a *Non Pros*. The rule to transcribe may be served on the plaintiff in error, and need not be served on his attorney.

*What time the clerk of the errors takes to transcribe.*

If the writ of error be returnable the first day of a term, the clerk of the errors takes the whole term to transcribe the record in, and does not carry in the transcript until the last day of that term; and if the writ of error be returnable on any other return than the first return of a term, he takes the whole subsequent vacation to transcribe

transcribe in, and carries in the record on the first day of the next term.

After the transcript is carried in, the whole proceedings are in the *King's Bench*. See the *Attorney's Practice in the Court of King's Bench*.

The plaintiff had obtained judgment in *Trin.* 1726. Error was brought in *Trin.* 1727. and the want of a warrant of attorney had been assigned for error, and a *Certiorari* taken out and returned, that there was no warrant of attorney, whereupon the plaintiff applied to the court for leave to file his warrant of attorney. After hearing *Cheffhyre pro Quer.* and *Whitaker* and *Raby pro Def.* and great consideration, the court refused to let the warrant of attorney be filed. *Nipson and Quilter, Mich.* 1 *Geo.* 2. *Leave to file warrant of attorney after error brought denied.*

The plaintiff has brought a *Scire facias* on a recognizance of bail, and had filed a warrant of attorney *de pl'ito transgr. super casum super scire facias*; error was brought, and the want of warrant of attorney assigned for error, and a *Certiorari* returned, that there was no warrant of attorney. The plaintiff moved to amend the warrant of attorney, by making it *de placito Debiti super Sci. Fa.* and upon hearing *Brantbwayte pro Quer.* the court gave leave to amend. *Societas Belgica ad Indos occidentales negotians v. Henriques & al<sup>s</sup>, Pas.* 1 *Geo.* 2. 2 *Brownl.* 167. 2 *Coke* 135. *Warrant of attorney amended after error brought.*

After error brought the record was ordered to be amended, by inserting at the top *Record amended after error brought.*

top of the roll from the day of St. Martin in fifteen days, in the ninth year, &c. The cause of action having arose in Michaelmas term. *Deacon and Vivian, Pas. 9 G. 2.*

*The like on payment of costs, if plaintiff in error did not proceed.*

Judgment roll amended after error brought, and *in nullo est erratum* pleaded, by striking out the words *ought to*, and inserting the word *do*, the judgment being, that the plaintiff *ought to recover*, instead of *do recover*: This amendment was ordered without costs, if the plaintiff in error should proceed; *aliter* costs were to be paid. *Foster and Blackwell, Pas. 10 G. 2.*

*No discontinuance after error without costs.*

Judgment *pro Quer.* on demurrer, but not entered on record. Error brought, the court refused to let the plaintiff discontinue without paying the costs on the writ of error. *Pym and Warren, Mich. 6 Geo. 2.*

### Precedents of Declarations, &c.

*Count in dower.*

Hampshire, *J.* R. and E. his wife, by *W. S.* to wit, *J.* their attorney, demand against *A. W.* the third part of two messuages and two gardens, with their appurtenances in Gosport, as the dower of the said E. of the endowment of *A. W.* deceased, her late husband, by writ of our lord the king of dower, whereof she hath nothing, &c.

*Judgment by Nil Dicit.*

And the said *A.* the now defendant, by *R. P.* his attorney, comes and says nothing in bar of the said action of the said *J.* and E. whereby the said *J.* and E. remain

main against the said *A.* the now defendant thereof undefended. Therefore it is considered, that the said *J.* and *E.* recover against the said *A.* the now defendant, their seisin of the third part above demanded, with the appurtenances, to be held by them in severalty by metes and bounds; and nothing of the mercy of the said *A.* the now defendant, because he came the first day by summons, &c. And hereupon the said *J.* and *E.* say, that the said *A.* late husband of the said *E.* died seised of the tenements aforesaid, with their appurtenances in his demesne as of fee, and pray a writ of the said lord the king to be directed to the sheriff of the county aforesaid, as well to give them full seisin of the said third part with the appurtenances, as to inquire of damages, &c. And it is granted to them, returnable here, &c. [*the return*] At which day here come the said *J.* and *E.* by their said attorney, and the sheriff, to wit,—— now returns, that he, by virtue of the said writ to him directed, on the 20th day of *November* last past, did cause full seisin of the third part of the tenements aforesaid, with the appurtenances (that is to say) of one messuage, &c. to hold the same to the said *J. R.* and *E.* in severalty by metes and bounds, for and in the name of the whole dowry of the said *E.* of the tenements aforesaid, with the appurtenances, happening to her by the death of the said *A.* her late husband, as by the said writ  
he

*Writ of seisin  
and inquiry a-  
warded.*

he was commanded, &c. The same sheriff here also returns a certain inquisition taken before him at the house of — at — in the said county, the — day of — last past, by the oath of 12, &c. by virtue of the writ aforesaid taken, by which it is found, that the said *A. W.* deceased, late husband of the said *E.* in the said writ named, on the — day of — in the year of our Lord —, died seised of and in the tenements aforesaid, with the appurtenances, in the said writ specified, in his demesne as of fee, and that the said tenements are of the clear yearly value in all issues beyond reprises of 12*l.* and that 20 years are elapsed since the death of the said *A.* the late husband, &c. and that the said *J.* and *E.* have sustained damages by reason of detaining of the dower aforesaid, besides their costs and charges by them laid out about their suit in this behalf to 80*l.* and for those costs and charges to 40*s.* Therefore it is considered, that the said *J.* and *E.* recover against the said *A.* the now defendant, as well the value of the third part of the tenements aforesaid, with the appurtenances, from the time of the death of her said late husband, &c. (which said value from the time of the death of the said *A.* late the husband of the said *E.* amounts to 80*l.*) as their damages aforesaid to 82*l.* by the inquisition aforesaid in form aforesaid found, and also 8*l.* 10*s.* to the said *J.* and *E.* at their request, for  
 I their

*Signed 4th*  
*Feb. 1735.*

their costs and charges aforesaid, by the court here for increase adjudged, which said value and damages in the whole amount to —, &c.

And the said *W.* by *H. B.* who is admitted by the court of the king here to defend in this behalf for the said *W.* who is under the age of 21 years, as the guardian of the said *W.* comes and says, that from the death of the said *J.* late husband of the said *M.* he has been always ready, and still is ready to render to the said *M.* her dower, of the said tenements and premises, with the appurtenances, and renders the same here in court to the said *M.*

*Def. by guardian says, he was always ready to render dower.*

And thereupon the said *M.* prays leave to imparl here until from the day of St. Michael in three weeks, and she has it, &c. The same day is given to the said *W.* here, &c. At which day came here the aforesaid *M.* by her attorney aforesaid, and the said *W.* by his guardian aforesaid; And because the said *M.* doth not deny the plea of the said *W.* Therefore it is considered, that the said *M.* do recover her seisin against the said *W.* of the third part of the tenements aforesaid, with the appurtenances, and nothing of mercy, because the said *W.* came on the first day of the summons, &c. And hereupon the said *M.* saith, that the said *J.* her former husband, &c. died seised of the tenements aforesaid, with the appurtenances, whereof,

*Imparlance.*

*Judgment.*

*Writ of seisin  
and inquiry.*

of, &c. in his demesne, as of fee; And she prays a writ of our sovereign lord the king, to be directed to the sheriff of the county aforesaid, as well to cause full seisin to be made to her of the said third part of the said tenements with the appurtenances, as also to inquire of damages, &c. And because by the confession of the said *W.* above it seems to the court here, that the same *W.* from the death of the said *J.* was always ready to render to the said *M.* her dower of the tenements aforesaid, with the appurtenances, by reason whereof the said *M.* ought not to recover the value of the third part of those tenements, nor her damages, by occasion of the detaining her dower aforesaid, from the time of the death of the said *J.* her said former husband, until the day of the issuing out the said original writ of the said *M.* against the said *W.* to wit, from the 6th day of *February* in the year of our Lord 1735. And it seems to the justices here, that the said *M.* ought to recover against the said *W.* the value of the third part of the tenements aforesaid, with the appurtenances, and her damages occasioned by detaining her dower aforesaid, from the aforesaid day of issuing out the original writ aforesaid, if, &c. Therefore the sheriff is commanded, that he cause to be made to the said *M.* full seisin of a third part of the tenements aforesaid, with the appurtenances; and that by the oath of

good and lawful men of his bailiwick he diligently inquire, if the said *J.* died seised of the tenements aforesaid, with the appurtenances in his demesne, as of fee-simple, or in fee-tail; and if he shall so find by their inquisition, then that he inquire upon their oath, how much the tenements aforesaid are worth by the year in all issues above reprises, according to the just value thereof; as also what damages the aforesaid *M.* hath sustained, as well by occasion of the detaining her dower aforesaid from the said day of the issuing the original writ aforesaid, beyond the value thereof, as for her expences and costs by her laid out in this suit; And the inquisition, &c.

And the said *T. A.* by *R. H.* his attorney *Plea in dower,* comes and says, that the said *M.* ought *husband not* not to have her dower of the said tene-*seised.* ments, with the appurtenances, by the endowment of the said *J.* her late husband, because he says, that the said *J.* her late husband, &c. neither at the day when he married the said *M.* nor at any time afterwards, was seised of the said tenements, with the appurtenances, whereof, &c. of such an estate as he could thereof endow the said *M.* And of this he puts himself upon the country; and the said *M.* doth so likewise, &c. Therefore, &c.

Middlesex, to wit, *R. D.* late of London, *Debt on a* carpenter, was summoned to answer unto *judgment.*  
*L. P.* of a plea, that he render to him 62*l.*

of lawful money of *Great Britain*, which he owes to, and unjustly detains from him, &c. And whereupon the said *L.* by *J. C.* his attorney, says, that whereas the said *L.* heretofore, that is to say, in *Easter* term in the 4th year of the reign of his present majesty king *George* the Second, in his said majesty's court before Sir *Robert Eyre*, Knt. and his companions, then his said majesty's justices of the bench here at *Westminster* in the county of *Middlesex*, by the consideration of the said court recovered against the said *R.* 62 *l.* which were adjudged to the said *L.* in the said court for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings to the said *L.* by the said *R.* then lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted, as by the record and proceedings thereof now remaining in his said majesty's said court here, to wit, at *Westminster* aforesaid in the said county of *Middlesex*, may appear; which said judgment still remains in its full strength, force and effect, not reversed, vacated, annulled, discharged or satisfied; And the said *L.* hath as yet obtained no satisfaction of the aforesaid judgment, whereby an action hath accrued to the said *L.* to demand and have of the said *R.* the said 62 *l.* yet the said *R.* (altho' often requested) hath not yet paid the said 62 *l.* or any part thereof, to the said *L.* but  
bath

hath hitherto refused, and still doth refuse to pay him the same, to the damage of the said *L.* 20*l.* And therefore he brings suit, &c.

And the said *R.* by *W. W.* his attorney *Plea Nul tiel* comes and defends the force and injury, *Record.* when, &c. and says, that the said *L.* ought not to have his said action against him, because he says, that there is not any such record of recovery of damages aforesaid against him the said *R.* in his said majesty's court before Sir *Robert Eyre*, Knight, and his brethren, his said majesty's justices of the common bench, as the said *L.* in his declaration hath above alledged: And this he is ready to verify; Therefore prays judgment, if the said *L.* ought to have his said action thereof against him, &c.

And the said *L.* saith that he by any *Replication,* thing before alledged ought not to be barred from having his aforesaid action maintained against the said *R.* because he saith, *Habetur tale Record.* that there is such a record of recovery against him the said *R.* in his said majesty's court of common bench here remaining, as by the said declaration is above alledged; and this he is ready to verify by the said record; and he prays, that the said record may be inspected and seen by the justices here, &c. And because the said *L.* has not the said record now ready here in court, it is said by the said court here to the said *L.* that he have the said record here on — The same day is given to the said *R.* here, &c.

Cooke.

Michaelmas Term in the First  
Year of the Reign of King  
George the Second.

Debt by admi-  
nistrators de  
bonis non, &c.  
on a judgment  
recovered by  
testator.

Middlesex, **L**EWIS Westcombe, otherwise  
to wit, called Westcombe late of  
Rockley in the county of York, Esq; was  
summoned to answer Robert Richardson,  
Esq; administrator of the goods and chat-  
tels, rights and credits which were of Ro-  
bert Fairbeard, Esq; deceased, at the time  
of his death, by Anne Swinburne, widow,  
executrix of the testament of the said  
Robert Fairbeard, unadministered, with his  
testament annexed, of a plea, that he ren-  
der to the said Robert Richardson 602 l.  
10 s. of lawful money of Great Britain,  
which he unjustly detains from him; And  
whereupon the said Robert Richardson, by  
Francis Woodhouse his attorney says, that  
whereas lately, to wit, in the term of St.  
Hilary in the fifth year of the reign of our  
sovereign lady Anne, late queen of Great  
Britain, &c. in the court of our said lady  
the late queen, before the then justices of  
our said lady the late queen of the Bench  
at Westminster, he the said Robert Fairbeard,  
by the consideration of the same court re-  
covered against the said Lewis, by the  
name of Lewis Westcome, late of Rockley  
in the county of York, Esq; as well a cer-  
tain debt of 600 l. as 50 s. which were ad-  
judged to the said Robert Fairbeard for  
his

his damages which he had by occasion of the detaining that debt, whereof the said *Lewis* was convicted, as by the record and process thereof now remaining in the court of our lord the present king of the Bench at *Westminster* afore said in the said county of *Middlesex* plainly appears; And the said *Robert Richardson* further says, that the said judgment still remains in its full force, strength and effect no ways satisfied, reversed or annulled; And that the said *Robert Fairbeard* in his life-time, or the said *Anne Swinburne* in her life-time, or either of them, or he the said *Robert Richardson* after the death of the said *Anne*, (\* to which said *Robert Richardson* administration

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\* If an archdeacon commits administration, it need not be shewed by what authority, for he is *Oculus Episcopi*, & *de jure ordinario* is to commit administration. *Cluberton* and *Trudgeon*, *Cro. Jac.* 556. *Style* 54. 1 *Lev.* 193. So if granted by an official. *Cro. Eliz.* 102. 2 *Mod.* 65. By commissary. 1 *Lutw.* 9. By chancellor. *Littlel. Rep.* 79, 80. 1 *Leon.* 312. *Hestl.* 68. *Per Vicarium Generalem in Spiritualibus Episcopi B. &c.* 1 *Lev.* 312. If granted by dean, it must be shewed by what authority. *Cro. Eliz.* 791. So if granted by *A. B. Sacrae Theologiae Professor.* *Morgan* and *Williams*, *Moor* 367. *Pl.* 504. *Cro. Eliz.* 431. Where granted by archbishop, it need not be shewed there were *Bona notabilia.* *Woodward* and *Thomson*, *Cro. El.* 907. Nor need be shewed whether as ordinary, or by his prerogative. *Cro. Eliz.* 6. It is sufficient to shew, that the king granted administration without shewing his power, for he hath universal jurisdiction. *All.* 53. 1 *Sid.* 302. Though in a declaration the bishop's authority to grant administration need not be shewed; yet it is otherwise in a bar. *Chand*

nistratation of the goods and chattels, rights and credits which were of the said *Robert Fairbeard* at the time of his death unadministered by the said *Anne* after the death of the said *Anne*, to wit, on the 20 day of *July* in the year of our Lord 1727. at *Westminster* aforesaid in the said county of *Middlesex*, was in due manner, (with the testament of the said *Robert Fairbeard* annexed) committed by *William*, by Divine Providence archbishop of *Canterbury*) have not, nor has any one of them sued out execution against the said *Lewis* upon the said judgment for the debt and damages aforesaid, whereby an action has accrued to the said *Robert Richardson*, as administrator as aforesaid, to demand and have of the said *Lewis* the said 602 l. 10 s. Yet the said *Lewis*, although often required, &c. has not paid the said 602 l. 10 s. to

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and *Bird*, *Cro. Eliz.* 838. And for this diversity vide 1 *Leon.* 312. *Lit.* 79, 80. 1 *Sid.* 302. *Style* 106, 282. 1 *Lew.* 193. — *Palm.* 97, 98. And a diversity taken where committed by one that hath a particular jurisdiction within a certain circuit, for there it ought to be specially shewed, that he is ordinary of that place; but otherwise where committed by an archdeacon who hath episcopal jurisdiction, and the power of the bishop. *Skidmore* and *Winston*, *Cro. Eliz.* 879. 1 *Sid.* 228, 302. *Style* 54. 1 *Salk.* 38. 4 *Mod.* 133.

If shewed that administration was *debito modo* granted to the plaintiff per A. B. *Commissarium & Officiale peculiari Jurisdictionis de B.* it is well enough without shewing he had power to grant administration, for every peculiar hath an ordinary. *Denham* and *Stephenson*, *Salk.* 40. *Mason* and *Hampton*, 4 *Mod.* 133. 1 *Shorw.* 355. *Comb.* 196. 6 *Mod.* 241.

the

the said *Robert Fairbeard* in his life-time, or to the said *Anne Swinburne* after the death of the said *Robert Fairbeard*, or to either of them, or to the said *Robert Richardson*, after the death of the said *Anne*; but refused to pay the same to the said *Robert Fairbeard* in his life-time, and to the said *Anne Swinburne* after the death of the said *Robert Fairbeard*, and still refuses to pay the same to the said *Robert Richardson*, and unjustly detains, in delay of the administration of the goods and chattels, rights and credits of the said *Robert Fairbeard* unadministered by the said *Anne Swinburne* in her life-time, and to the damage of the said *Robert Richardson* of 10*l*. And thereupon he brings his suit, &c. \* And the said *Robert Richardson*

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\* If one brings an action as administrator, he must make a *Profert in Cur.* of his letters of administration, by which he is intitled to the action. *Cuts and Bennet, Cro. Jac.* 409, 412. Held matter of substance; diversity where one brings an action, and where one pleads an administration in bar. *Cart.* 227. 6 *Mod.* 242. *Cro. Jac.* 556. *Vide* 1 *Sid.* 98. *Style* 236, 282. A verdict did not help, because not necessary to be proved on the trial. But it is now remedied by 16 & 17 *Car.* 2. *Salk.* 38. 4 *Mod.* 133. *Comb.* 196.

After verdict, judgment shall not be stayed or reversed for want of a *Profert in Curia* of any letters of administration. *Stat.* 15 & 17 *Car.* 2. c. 8.

No advantage or exception shall be taken for the default of alledging the bringing into court letters of administration; but the court shall give judgment according to the right, unless the same be particularly set down, and shewed for cause of demurrer. *Stat.* 4 & 5 *Ann.* c. 16.

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brings

*The Attorney's Practice*

brings here into court the said letters of administration, which testify the committing the said administration in form aforesaid; the date whereof is on the day and year in that behalf above mentioned, &c.

*Debt on a  
judgment of  
the palace  
court.*

Surrey, *to wit*, J. M. late, &c. was summoned to answer H. G. of a plea, that he render to him 99 s. and 8 d. which he owes to and unjustly detains from him, &c. And thereupon the said H. by J. C. his attorney saith, that whereas the said H. (that is to say) at the court of the king's palace at *Westminster*, held before the judges of the said court there (*to wit*) at *Southwark* in the county of *Surrey* aforesaid, within the jurisdiction of the said court, on *Friday* the 23d day of *January* in the ninth year of the reign of the present king, by consideration of the said court recovered against the said J. M. (by the name of J. M.) 99 s. and 8 d. which were assessed to the said H. in the aforesaid court of the king's palace at *Westminster*, held before the said judges of the said court there, for his damages which he had sustained, as well by occasion of the not performing several promises and undertakings made by the said J. M. to the said H. as for his costs and charges by him about his suit in that behalf expended, whereof the said J. is convicted, as by the record and proceednigs thereof in the same court of the king's palace at *Westminster*, held before the judges of the said court

court there, *to wit*, at *Southwark* aforesaid in the county of *Surrey* aforesaid, within the jurisdiction of the said court there remaining may appear; Which said judgment still remains in the said court there in full force, not in the least satisfied, reversed or discharged; And the said *H. G.* hath not as yet sued out any execution upon that judgment, by which an action hath accrued to the said *H.* to require and have of the aforesaid *J. M.* the aforesaid 99 s. and 8 d. *Tet, &c.*

Plea, *Nul tiel record.*

Repl. *Habetur tale record.*

And hereupon the said *H.* prays the Certiorari to king's writ to be directed to the judges of <sup>the judges of</sup> the court of the king's palace at *Westmin-* <sup>that court.</sup> *ster*, and to every of them, to certify to the justices of the said lord the king here, Whether there be such record of such recovery of the said 99 s. and 8 d. against him the said *J.* by the said *H.* or not; and it is granted to him, returnable here. —

At which day here come as well the said *H.* as the said *J.* by their attornies aforesaid, and the said judges of the court, namely, *W.* duke of *D.* steward of the king's household, Sir *P. M.* Knt. marshal of the said household, and Sir *T. A.* Knight, steward of the palace court aforesaid, sent to the justices here the record aforesaid, whereof there is mention above made between the parties aforesaid, and remaining before them; which said writ and record

cord remain filed amongst the records here, without day, &c.

Whereupon the said *H.* prays judgment and his debt aforesaid, together with his damages by reason of detaining the said debt to be adjudged to him, &c.

Thomson.

Trinity Term in the 13th and 14th years of the reign of king George the Second.

*Debt on bond  
by executor  
against an  
heir at law.*

1 Lev. 130,  
224.

London, *JOHN Stout*, late of the town to wit, *J* of Hertford in the county of Hertford, Gent. brother and heir of *Henry Stout*, late of the island of *Jamaica*, Esq; deceased, otherwise lately called *Henry Stout*, nunc in London, sed de insula *Jamaicæ*, armiger<sup>s</sup>, was summoned to answer *Sarah Fitter*, widow, executrix of the testament and last will of *James Fitter*, late of London, merchant, deceased, of a plea that he render to her 4330*l.* which he unjustly detains, &c. and whereupon the said *Sarah*, by *Joshua Sharpe* her attorney says, that whereas the said *Henry*, brother of the said *John*, whose heir he is, in his life-time, to wit, on the fifth day of November in the year of our Lord 1725, at London, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory acknowledged himself to be bound to the said *James* in his life-time in the said 4330*l.* to be paid to the said *James*

*James* when he should be thereunto required; And to which payment well and faithfully to be made he bound himself and his heirs by the said writing; *Yet* the said *Henry* in his life-time, and the said *John*, brother and heir of the said *Henry*, after the death of the said *Henry* (although often required) have not, nor hath either of them paid the said 4330*l.* to the said *James* in his life-time, or to the said *Sarah* after the death of the said *James*, but refused to pay the same to the said *James* in his life-time, and to the said *Sarah* after his death; And the said *John* still refuses to pay the same to the said *Sarah*, and unjustly detains, in delay of the faithful execution of the said testament: Whereupon she says she is injured, and hath damage to the value of 20*l.* And thereupon she brings suit, &c. And the said *Sarah* brings here into court, as well the said writing which testifies the said debt in form aforesaid, whose date is the same day and year aforesaid; \* as the letters

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\* When one sues as executor, he must in his declaration shew forth the testament to intitle him to the action. *Edwards and Stapleton, Cro. Eliz. 551.* *Cope and Lewin, Hob. 38.* *1 Brownl. 9.* *Browning and Fuller, Cro. Jac. 299.* It is matter of substance, and not form only. *1 Brownl. 200.* But whether substance or form. *Hob. 233.* *Cro. Jac. 556.* *2 Saund. 402.* *1 Sid. 249.* Diversity taken, where upon the executor's own possession, and where upon the possession of the testator. *2 Rel. Rep. 428.* *Hob. 218.* Where the want thereof

ters testamentary of the said *James*, whereby it appears to the court here, that the said *Sarah* is executrix of the testament and last will of the said *James*, and therefore has the administration, &c.

*Plea.*  
*Riens per*  
*discent.*  
 1 *Lev.* 130,  
 224.  
*Stat.* 3, 4 *W.*  
 & *M. c.* 14.  
 5 *Mod.* 122.  
*Redshaw and*  
*Hester.*  
*Jeffry and*  
*Barrow, Pas.*  
 10 *Annæ.*  
*Cases in law*  
*and equity* 18.

And the said *John*, by *Thomas Smith* his attorney, comes and defends the force and injury, when, &c. and saith, That he ought not to be charged with the debt aforesaid, as brother and heir of the said *Henry*, by virtue of the said writing, Because protesting, that the writing aforesaid is not the deed of the said *Henry*; And for plea saith, that he hath not any lands or tenements by descent, as heir to the said *Henry*, in fee-simple, nor had on the day of obtaining the original writ of the said *Sarah*, nor at any time since: And this he is ready to verify: Wherefore he prays judgment, if he ought to be charged with the debt aforesaid, as brother and heir of the said *Henry*, by virtue of the writing aforesaid.

Lilly 147.

*Replication.*

And the said *Sarah* saith, that by any thing by the said *John* above in pleading alledged,

is help'd by the defendant's pleading thereto. 1 *Salk.* 37, 38. 6 *Mod.* 135. *Comb.* 465. *Noy* 63.

After verdict, judgment shall not be stayed or reversed for want of a *Profert in curia* of any letters testamentary. *Stat.* 16, 17 *Car.* 2. c. 8.

No advantage or exception shall be taken for the default of alledging the bringing into court of letters testamentary, but the court shall give judgment according to the right, unless the same be particularly set down and shewn for cause of demurrer. *Stat.* 4, 5 *Ann. c.* 16.

alledged, she ought not to be precluded from having her said action against him, because she says, that before the day of obtaining her said original writ, *to wit*, on the 3d day of *April* in the 13th year of the reign of our said lord the now king, the said *John* had *sufficient* lands and tenements by descent, as heir to the said *Henry*, in fee-simple, whereout he might have satisfied the said *Sarah* the debt and damages aforesaid, *to wit*, at *London* aforesaid, in the parish and ward aforesaid: And this she is ready to verify: Wherefore she prays judgment, and that the said debt, together with the damages by means of the detention of the said debt, may be adjudged unto her, &c.

And the said *John* saith, that before the day of obtaining the said original writ of the said *Sarah*, he had not *sufficient* lands and tenements by descent, as heir to the said *Henry*, in fee-simple, whereout he might have satisfied the said *Sarah* the debt and damages aforesaid, *or any part thereof*, as the said *Sarah* hath in replying above alleged: And of this he puts himself on the country, &c. And the said *Sarah* doth so likewise, &c. *Rejoinder.*

Oxfordshire, *to wit*, *A. H.* late, &c. *Debt on a bond* (otherwise called, &c.) was summoned to *by surviving* answer *W. B. J. V.* and *T. B.* of a plea, *obligees.* that she render to them 10*l.* of lawful money of *Great Britain*, which she owes to them, and unjustly detains, &c. and where-

whereupon the said *W. J.* and *T.* by *C. C.* their attorney say, that whereas the said *A.* on the — day of —, in the year of our Lord —, at — in the county aforesaid, by her certain writing obligatory had acknowledged herself to be bound to the said *W.* and to one *V. S.* now deceased (whom the said *W. J.* and *T.* survived) and the said *J.* and *T.* in the the aforesaid 10*l.* to be paid to them the said *W. V. J.* and *T.* when she the said *A.* should be thereunto required; Yet the aforesaid *A.* (though often required) hath not paid the said 10*l.* to the said *W. V. J.* and *T.* or any of them, in the life-time of the said *V.* or to the said *W. J.* and *T.* or any of them, since the death of the said *V.* (whom the said *W. J.* and *T.* survived) but hath refused to pay them the same, and doth still refuse to pay the same to the said *W. J.* and *T.* Whereupon they say they are injured, and have damage to the value of 10*l.* And thereupon they bring suit, &c. And they bring here into court the said writing obligatory, which testifies the debt aforesaid in form aforesaid, the date whereof is on the day and year abovesaid, &c.

*Debt on a bond* Middlesex, to wit, *J. M.* late of *West-*  
*by the executor minster* in the county of *Middlesex* afore-  
*of the obligee.* said, lime-merchant, otherwise called *J.*  
*M. de paroch. sanct. Margar' Westminst. in*  
*com. Middlesex,* — was summoned to an-  
 swer unto *W. F.* executor of the testament

and last will of *R. F.* his late father deceased, in a plea, that he render to the said *W. F.* 200 *l.* which he unjustly detains from him, &c. And whereupon the said *W. F.* by *W. W.* his attorney saith, that whereas the aforesaid *J.* the 22d day of *April* in the year of our Lord 1728, at *Westminster* aforesaid in the county aforesaid, by his certain writing obligatory acknowledged himself to be held and firmly bound unto the aforesaid *R. F.* in his life-time in the aforesaid 200 *l.* to be paid to the aforesaid *R. F.* his executors or administrators, when he the said *J.* should be thereunto required: Nevertheless the aforesaid *J.* (although often required) the aforesaid 200 *l.* to the aforesaid *R. F.* in his life-time, or to the aforesaid *W. F.* after the decease of the aforesaid *R. F.* hath not paid, but hath refused to pay them the same, and still refuses to pay the same to the said *W. F.* and unjustly detains the same: Whereupon the said *W. F.* saith that he hath sustained damage to the value of 10 *l.* And thereupon he bringeth this suit, &c. And he bringeth here into court as well the writing obligatory aforesaid, which testifies the debt aforesaid in form aforesaid, the date whereof is on the day and year aforesaid, as also the letters testamentary of the aforesaid *R. F.* whereby it sufficiently appears to the court here, that the aforesaid *W. F.* is the executor of the testament and last will of the aforesaid *R. F.* and thereupon to have administration, &c.

*J. J.*

*Debt on a bond  
against the ex-  
ecutor of the  
obligor.*

J. J. late of, &c. executor of the testament and last will of E. B. deceased, was summoned to answer J. T. of a plea, that he render to him 120 l. which he unjustly detains from him, &c. And whereupon the said J. T. by W. W. his attorney saith, that whereas the above-named E. in her life-time, *to wit*, on the — day of —, in the year of our Lord —, at — in the county of — aforesaid, by her writing obligatory acknowledged herself to be bound to the said J. T. in the aforesaid 120 l. to be paid to the same J. T. when she the said E. should be thereunto required: *Nevertheless* the said E. in her life-time, or the said J. J. after the death of the said E. although often required, have not, nor hath either of them paid the said 120 l. to the said J. T. but they refused, and the aforesaid J. J. doth still refuse to pay him the same; and whereupon the said T. says he is injured, and hath damage to the value of 10 l. And thereupon he brings his suit, &c. and he brings here into court the writing aforesaid, which testifies the debt aforesaid in form aforesaid, the date whereof is on the same day and year aforesaid.

*Plea,  
Ne unques  
executor.*

And the said J. J. by F. B. his attorney comes and defends the force and injury, when, &c. and saith, that the said J. T. ought not to have or maintain his said action against him, because he saith, that he the said J. J. never was executor of the testament and last will of E. B.

deceased,

deceased, as the said *J. T.* by his said declaration above alledges, neither did he ever as an executor of the testament and last will of the said *E. B.* administer any of the goods and chattels which were the said *E. B.*'s at the time of her decease: And this he is ready to verify: Wherefore he prays judgment, if the said *J. T.* ought to have his said action against him, &c.

And the said *J.* saith, that he ought *Replication,* not to be precluded from having his aforesaid action against the said *J.* because he saith that the aforesaid *J.* hath, as executor of the testament and last will of the said *E. B.* administered divers goods and chattels which were of the said *E. B.* at the time of her decease, that is to say, at \_\_\_\_\_ aforesaid: And this he prays may be inquired of by the country, &c.

Cooke.

*Michaelmas Term in the Eleventh  
Year of the Reign of King  
George the Second.*

Surrey, *J. L.* late of Saint Olave in South-  
to wit, *J. wark* in the county of Surrey  
aforesaid, woolstapler, was attached by  
his present majesty's writ of privilege is-  
suing out of this court, to answer to *L. R.*  
Gentleman, one of the attornies of his  
said majesty's court of Common Bench  
Vol. I. D d here,

*Debt on a bail-  
bond at the suit  
of an attorney.*

here, according to the liberties and privileges of the same court for such attornies, and other ministers of the same Bench from time beyond the memory of man used and approved in the same court, in a plea of debt, and whereupon the said L. in his proper person says, that the said J. has not rendered to him the said L. 63 l. 2 s. which he owes to him, and unjustly detains, for that whereas, on the 29th day of *June* in the 11th year of his present majesty's reign, the said L. (he being then one of the attornies of the said court of Common Bench) sued forth out of his majesty's said court of Common Bench here, to wit, at *Westminster* in the county of *Middlesex*, his said majesty's writ, called a writ of attachment of privilege, against the said J. L. woolstapler, directed to the sheriff of the said county of *Surrey*, by which said writ the said sheriff was commanded by his said majesty to attach the said J. L. if he should be found within his bailiwick, and him safely keep, so that he might have him before his said majesty's justices at *Westminster*, on *Monday* next after three weeks from the day of Saint *Michael* then next following, to answer the said L. one of the attornies of his said majesty's court of Common Bench, according to the liberties and privileges of that court for such like attornies and other ministers of the same Bench used and approved of in the same, from the time whereof there was not any remembrance to the contrary, in  
a plea

a plea of *trespass upon the case*, and that the said sheriff should have there that writ; which said writ afterwards, and before the return thereof, that is to say, on the 11th day of *August* in the year of our Lord 1737. at the said parish of *St. Olave Southwark* in the said county of *Surrey*, was delivered by the said *L.* to *J. R.* then, and continually afterwards until the return of the said writ, sheriff of the said county of *Surrey*, to be executed in due form of law; by virtue of which said writ the said *J. R.* afterwards, and before the return of the said writ, that is to say, on the said 11th day of *August* in the said year of our Lord last above mentioned, at the said parish of *Saint Olave Southwark* aforesaid, within his bailiwick, arrested the said *J. L.* and had and detained him there in his custody by virtue of the said writ, until the said *J. L.* afterwards, and before the return of the said writ, *to wit*, on the said 11th day of *August* in the year of our Lord 1737. at the parish of *Saint Olave Southwark* aforesaid in the said county of *Surrey*, by his writing obligatory, commonly called a bail-bond, acknowledged himself to be held and firmly bound to the said *J. R.* by the name of *J. R. Esq;* high sheriff of the county of *Surrey* aforesaid, in the sum of 63*l.* 2*s.* of good and lawful money of *Great Britain*, to be paid to the said sheriff when he should be thereto required, with a condition thereunder writ-

ten, that if the said *J. L.* should appear before his said majesty's justices at *Westminster* on the said *Monday* next after three weeks from the day of *Saint Michael*, to answer the said *L.* one of the attornies, and so forth, in the said plea of trespass upon the case, that then that obligation to be void and of no force; otherwise to stand and remain in full force, vigour and effect; which said writing obligatory, with the said condition there-under written, was taken by the said sheriff by virtue of the said writ, and by force of the statute in such case lately made and provided. And the said *L.* in fact saith, that the said *J. L.* did not appear before his said majesty's justices at *Westminster*, on the said *Monday* next after three weeks from the day of *Saint Michael*, in the condition aforesaid mentioned, to answer to the said *L.* in his said plea of trespass upon the case, according to the form and effect of that condition, whereby that writing obligatory became forfeited to the said *J. R.* and the same being so forfeited, and the money therein mentioned, or any part of it, not being paid, he the said *J. R.* sheriff of the said county of *Surrey* afterwards, that is to say, on the first day of *November* in the year of our Lord 1737. at the said parish of *Saint Olave Southwark*, assigned to the said *L.* the said writing obligatory, by indorsing the same, and attesting it under his hand and seal in the presence of

two

two credible witnesses, *to wit*, *E. H.* and *G. N.* according to the form of the statute in such case made and provided; by reason of which said premisses, and by force of the statute in such case made and provided, an action hath accrued to him the said *L.* as assignee of the said *J. R.* sheriff of the said county of *Surrey*, to demand and have of the said *J. L.* the said sum of 63 *l.* 2 *s.* Nevertheless the said *J. L.* (although often requested) hath not rendered the said sum of 63 *l.* 2 *s.* to the said *L.* but hitherto always hath refused, and still doth refuse, to render the same to the said *L.* and the aforesaid sum of money mentioned in the said writing obligatory is still remaining unsatisfied, to the damage of him the said *L.* of 40 *s.* And therefore he brings suit, &c. And the said *L.* brings here into court the writing obligatory aforesaid, in form aforesaid indorsed, which testifies the said debt in manner aforesaid, and bears date the day and year in that respect above mentioned, &c.

*John Doe*

and

*Richard Roe,*

} Pledges of prosecuting.

*Hilary Term, &c.*

London, *O. W.* late of London, linen-dra- Declaration in  
to wit, per, was summoned to an- debt Qui tam  
D. d 3 swer on the stat. 8.  
Anne, c. 9.  
f. 35. For not inserting in indentures of apprenticeship the full sum received.

swer our lord the king, and *J. C.* who as well for our said lord the king as for himself prosecutes in this behalf, of a plea, that he render to our said lord the king and the said *J. C.* who as well, &c. 1260*l.* which to our said lord the present king and the said *J. C.* who as well, &c. he owes and unjustly detains, and whereupon the said *J. C.* who as well for our said lord the king as for himself prosecutes in this behalf by *W. W.* his attorney says, that by a certain indenture made at *London* afore-said, *to wit*, in the parish of *Saint Mary le Bow* in the ward of *Cheap*, after the first day of *May* in the year of our Lord 1710. *to wit*, on the 21st day of *August* in the year of our Lord 1723. between one *T. H.* son of *W. H.* late of *C.* in the county of *Derby*, Esq; deceased, and the said *O. W.* and in due manner executed, bearing date on the same day and year, the said *T.* put himself apprentice to the said *O.* by the name of *O. W.* citizen and leatherfeller of *London*, to be instructed in his art and business of a linen-draper, to serve as an apprentice from the day of the date of the said indenture, unto the full end and term of 7 years from thence next ensuing fully to be complete and ended; which said indenture then and there made and executed, contained all the covenants, articles, contracts and agreements, relating to the serving the said apprenticeship; And that in consideration of the premisses, and for and in respect

respect of the said apprenticeship, the said *T.* then, *to wit*, on the said 21st day of *August* in the said year of our Lord 1723. at *London* aforesaid, in the parish and ward aforesaid, paid to the said *O. W.* 300 pieces of coined gold money of *Great Britain*, called guineas, of the value in ready money of 315 *l.* as a reward and consideration for taking the said *T.* to be his apprentice, as aforesaid; and that the said sum of money of 300 pieces of coined gold so given and paid, as aforesaid, was not truly and fully inserted, written and specified in the same indenture, according to the form of the statute in such case lately made and provided, but in the place of it the sum of 300 *l.* only was inserted, written and specified in the same indenture, contrary to the form and effect of that statute, whereby an action has accrued to our said lord the king and the said *J. C.* who as well, &c. to demand and have of the said *O.* 630 *l.* parcel of the said 1260 *l.* being double the sum so given and paid as aforesaid. *And also* *Second count.*  
*whereas* by one other indenture made at *London* aforesaid, in the parish and ward aforesaid, after the first day of *May* in the year of our Lord 1710. aforesaid, *to wit*, on the said 21st day of *August* in the year of our Lord 1723. between one *T. H.* another son of the said *W. H.* late of *C.* in the county of *Derby*, Esq; deceased, and the said *O. W.* and in due manner executed, bearing date on the same day and year, the said last mentioned *T.* put himself apprentice to  
D d 4 the

the said *O. W.* to be instructed in his said art and business of a linen-draper, to serve him after the manner of an apprentice, from the day of the date of the said last indenture, unto the full end and term of 7 years from thence next ensuing fully to be complete and ended; which said last indenture then and there made and executed, contained all the covenants, articles and agreements relating to the serving the said apprenticeship last mentioned; and that in consideration of the premisses, and for and in respect of the said apprenticeship last mentioned, the said *T.* then, *to wit*, on the said 21st day of *August* in the said year of our Lord 1723. at *London* aforesaid in the parish and ward aforesaid, paid to the said *O. W.* 315 *l.* of lawful money of *Great Britain*, as a reward and consideration for taking the said last mentioned *T.* to be his apprentice as aforesaid; and that the said sum of 315 *l.* so given and paid as aforesaid, was not truly and fully inserted, written and specified in the said last indenture, according to the form and effect of the statute in such case lately made and provided, but in the place thereof the sum of 300 *l.* only was inserted, written and specified in the said last indenture, contrary to the form and effect of that statute, whereby an action has accrued to our said lord the king and the said *J. C.* who as well, &c. to demand and have of the said *O. W.* other 630 *l.* residue of the said 1260 *l.* being double the last

ment

mentioned sum so given and paid as afore-  
said; Yet the said O. W. (although often  
required) has not yet rendered the said  
1260*l.* or any parcel thereof, to our said  
lord the king and the said J. C. who as  
well, &c. or to either of them, but has hi-  
therto denied, and still does deny to ren-  
der the same to them, to the damage of  
the said J. C. who as well, &c. of 10*l.* And  
thereupon as well for our lord the king as  
for himself, he brings suit, &c.

Middlesex, to wit, Be it remembered, *Debt against*  
That on the 23d day of *October* in this *the warden of*  
same term, James Willis came here into *the Fleet for*  
court by G. W. his attorney, and exhibit- *an escape.*  
ed to his majesty's justices here his cer- *Lilly's Ent.*  
tain bill against James Gambier, Esq; war- *156.*  
den of his now majesty's prison of the Fleet,  
present here in court in his own proper  
person, in a plea of debt, the tenor of which  
bill followeth in these words: To the ju-  
stices of his majesty's court of Common  
Bench, Middlesex, to wit, J. W. by G. W.  
his attorney complaineth of James Gambier,  
warden of his now majesty's prison of the  
Fleet, present here in court in his own pro-  
per person, in a plea of debt, for that he  
hath not rendered to the said J. Willis  
42*l.* 10*s.* which he oweth to, and unjust-  
ly detaineth from him, &c. for that, to  
wit, That whereas the said J. Willis here-  
tofore (that is to say) in *Easter* term, in  
the 7th year of the reign of our sovereign  
lord George the Second, now king of Great  
Britain,

Britain, &c. in his majesty's court of Common Bench here at *Westminster* in the county of *Middlesex*, by the judgment of the same court recovered against one *Isaac Meure*, Esq; 42 l. 10 s. for his damages which he had sustained, as well by occasion of the said *Isaac* not having performed several promises and assumptions by him then lately made to the said *J. Willis* at *Westminster* aforesaid, as for his costs and charges by him in and about his suit in that behalf put to, whereof the said *Isaac Meure* is convicted, as by the records remaining in his said present majesty's court of Common Bench here, to wit, at *Westminster* aforesaid, fully appears; which said judgment hitherto remains in its full force and vigour, and in no manner reversed, annulled or satisfied: (And whereas also afterwards, to wit, on *Wednesday* next after three weeks of the holy *Trinity* in *Trinity* term aforesaid, the said *I. Meure* then being in the custody of the said *James Gambier* then and from that time till now, and still being warden of the said prison of the *Fleet*, he the said *I. Meure*, by the said *J. Gambier* then warden of the said prison of the *Fleet*, by virtue of the writ of the said lord the king of *Habeas Corpus* directed to him the said warden, was brought to the bar here at *Westminster* aforesaid, and thereupon the said *I. Meure* then and there, at the desire of the said *J. Willis*, by his said attorney, was then and there by the said court committed to the prison

prison of the *Fleet* in execution for the said damages, there to remain until he should be thence legally discharged, as in the same court at *Westminster* appeareth on record.) And whereas also afterwards, to wit, on the 3d day of *July* last the same *I. M.* being then present in the said court of Common Bench here, to wit, at *Westminster* aforesaid, then and there at the request of the said *J. Willis*, by the said court was committed to the custody of the said *J. Gambier*, then and now warden of the same prison of the *Fleet*, in execution for the damages aforesaid, at the suit of the said *J. Willis*, as in the same court at *Westminster* appeareth on record, and in the custody of the said *J. Gambier* in the aforesaid prison the said *I. M.* remained for the causes aforesaid, until the said *J. Gambier* afterwards, to wit, on the 24th day of *July* in the 8th year of his said majesty's reign at *Westminster* aforesaid, freely and voluntarily permitted and suffered the said *I. M.* to go at large where-ever he pleased out of the custody of the said *J. Gambier* (the said *J. G.* being then and now warden of his said majesty's prison of the *Fleet*) the damages aforesaid, or any part or parcel thereof being not then, or yet in the least paid or satisfied to the said *J. Willis*, by which an action hath accrued to the said *J. Willis* to demand and have of the said *J. Gambier* the aforesaid 42 l. 10 s. Nevertheless the said *J. G.* (altho' often requested) the said 42 l.

to s. hath not yet rendered to the said *J. Willis*, but to render to him hath hitherto altogether denied, and still doth deny, to the damage of the said *J. Willis* 20*l*. And therefore he prays a remedy, &c.

Pledges of prosecution { *John Doe,*  
*Richard Roe.*

*Plea, that the prisoner escaped without the knowledge of deft. and returned before notice of the escape, and was afterwards discharged by the court by virtue of the act for relief of debtors.*

And the said *J. Gambier* in his proper person comes and defends the force and injury, when, &c. and says, that the said *J. W.* ought not thereupon to have or maintain his said action against him the said *J. G.* because he says, that after the commitment of the said *I. M.* to the said prison of the *Fleet* in execution for the demand aforesaid, at the suit of the said *J.* in form aforesaid made, to wit, on the said 15th day of *October* in the year of our Lord 1733. aforesaid, he the said *I. M.* then being in the prison of the *Fleet* aforesaid, in execution for the damages aforesaid, under the custody of the said *J. G.* against the will of the same *J.* and without the knowledge of the said *J.* escaped into the parish of *St. Clement Danes* aforesaid, and to places to the said *J. G.* unknown fled. And the said *J. G.* further says, that before the day of exhibiting the said bill, and before the said *J. G.* had any notice of the said escape, that is to say, the 31st day of the month of *October* aforesaid in the said year of our Lord 1733. at *London*, that is to say, in the parish of *St. Bridget*, other,

otherwise *Brides*, in the ward of *Farrington Without*, the said *I. M.* into the prison aforesaid, without the knowledge of the said *J. G.* returned, and continually after such return was detained in the same prison under the custody of the said *J. G.* in execution of the damages aforesaid, at the suit of the said *J.* until he the said *I. M.* afterwards, to wit, on the same 31st day of *October* at *Westminster* aforesaid in the county of *M.* aforesaid, by the said court of our sovereign lord the now king of the bench here aforesaid, by virtue of an act of parliament in such case made and provided, intituled, *An Act for the Relief of Debtors, with respect to the Imprisonment of their Persons*, out of the custody of him the said *J. G.* as to the said *I.* was discharged, he the said *J. G.* being then warden of the said prison of the *Fleet*, which same escape of the said *I. M.* out of the prison aforesaid, and out of the said *J. G.*'s custody as aforesaid, so as aforesaid made, is the same escape, for which the said *J.* above against the same *J. G.* hath declared: And this he the said *J. G.* is ready to verify: Wherefore he prays judgment, if the said *J.* ought to have or maintain his said action against him the said *J. G.* &c.

And the said *J. W.* says, that the afore-*Demurrer.*  
said plea by him the said *J. G.* pleaded, and the matter therein contained, are insufficient to preclude him the said *J.* from having his said action against him the said  
*James,*

*James*, to which said plea he the said *J.* is under no necessity, nor any ways bound by the law of the land, to answer: And this he the said *J.* is ready to verify: Wherefore upon account of the defect of a sufficient plea in this case he the said *J.* prays judgment, and his debt, together with his damages occasioned by the detention of the said debt, to be adjudged to him.

*Joinder in de-  
murrer.*

And in as much as he the said *J. G.* has alledged sufficient matter in law in his plea aforesaid, to preclude the said *J.* from having the said action against the said *James* which he the said *James* is ready to verify, and which the said *J.* does not deny, or give any answer thereunto, but utterly refuses to admit the verifying thereof, he the said *James* prays judgment, and that the said *J.* may be precluded from having his said action against him the said *James*. And because the justices here will advise themselves of and upon the premisses, before they give their judgment thereon, a day is given to the said parties here until ——— next after ——— to hear their judgment thereon, because the same justices here are thereof not yet advised, &c.

*Debt against a  
Sheriff for an  
escape.*

London, to wit, *H. H.* late of London, Knight, and *R. A.* late, &c. Esq; were summoned to answer unto *R. C.* in a plea that they render to him 13 *l.* which they owe, and unjustly detain from him, &c. and whereupon the said *W.* by *J. T.* his attorney

attorney saith, that whereas the said *W.* by the name of *W. C.* otherwise, *to wit*, in the term of the holy *Trinity* in the 6th and 7th years of the reign of the lord the now king, in the court of our lord the now king of the Common Bench at *Westminster*, before Sir *Robert E.* Knight, and his companions, then justices of our lord the king of the same Bench at *Westminster*, did recover by judgment of the said court against *T. B.* by the name of *T. B.* 13 l. for damages, which he the said *W. C.* had sustained by reason of the said *T.*'s not performing certain promises and undertakings then lately made to the said *W.* as for his costs and charges by him laid out about the said suit whereof the said *T.* is convicted, as by the record and proceedings thereof remaining in the said court may more fully appear; And the said *W. C.* afterwards, *to wit*, the 13th day of *June* in the 7th year of the reign of the lord the now king, prosecuted out of the said court of Common Bench, of and upon the said judgment, a certain writ of the lord the now king, directed to the sheriffs of *London*, by which writ the lord the now king commanded them that they took *T. B.* if he was to be found in their bailiwick, and him safely keep, so that they might have his body before the justices of our lord the king at *Westminster*, in ——— to satisfy *W. C.* for 13 l. which in the court of the lord the king, before the justices of our lord the king at *Westminster* had been

been awarded to the said *W. C.* for his damages which he had sustained by reason of the not performing several promises and undertakings made by the said *T.* to the said *W.* at *W.* whereof he was convicted. And reciting, Whereas the sheriff of the lord the king, of *Middlesex* had returned to the justices of the lord the now king at *Westminster*, in ——— then last past, that the said *T.* was not to be found in his bailiwick; and in as much as it was sufficiently testified in the said court of the lord the king, that he lurked and wandered up and down in their bailiwick, and that they should have there that writ, which writ prosecuted as aforesaid the said *W. C.* afterwards, and before the return thereof, *to wit*, on the 30th day of *June* in the same 7th year of the lord the now king at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap*, delivered to the said *H. H.* and *R. A.* then being sheriffs of *London* in due form of law to be executed; by virtue of which writ the said *H. H.* and *R. A.* then being sheriffs of *London* as aforesaid, afterwards, and before the return of the said writ, *to wit*, the same day and year at *London* aforesaid, in the parish and ward aforesaid, took and arrested the said *T.* and then and there had him in their custody in execution for the said damages; and the said *T.* being so as aforesaid in the custody of the said *H. H.* and *R. A.* then being sheriffs of *London*, in execution for the damages aforesaid, the said

said *H. H.* and *R. A.* then being sheriffs as aforesaid, the same day and year at *London* aforesaid, in the parish and ward aforesaid, without the licence and against the will of the said *W. C.* voluntarily permitted the said *T.* to go out of their custody at large where he would, the said *W. C.* of his said damages then or yet not being satisfied, by reason whereof an action accrued to the said *W. C.* to demand and have of the said *H. H.* and *R. A.* the said sum of 13 *l.* yet the said *H. H.* and *R. A.* have not, nor hath either of them rendered to the said *W. C.* the said 13 *l.* but altogether have, and each of them hath hitherto refused, and yet do, and each of them doth yet refuse to render the said 13 *l.* to the said *W. C.* wherefore he saith that he is damaged and hath damage to the value of 20 *l.* And therefore he brings this suit, &c.

London, to wit, *J. B.* late of *London*, Declaration on merchant, was attached to answer *R. S.* a policy of insurance of a plea of trespass on the case, &c. and whereupon the said *R.* by *W. W.* his attorney complains, that whereas the said *R.* the 17th day of *October* in the year of our Lord 1734, at *London* (that is to say) in the parish of *St. Mary le Bow*, in the ward of *Cheap*, according to the use and custom of merchants, caused to be made a certain writing of insurance, commonly called a policy of insurance, by which said writing the said *R.* by the name of *R. S.*

as well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might or should appertain in part or in all, did make assurance, and caused himself and them, and every of them, to be insured, lost or not lost, at and from *London* to *Rotterdam*, and thence to *Gambia* and *Cape Coast*, upon any kind of goods and merchandizes whatsoever, loaden, or to be loaden aboard the good ship or vessel called the *Dolphin*, whereof was master under God for that present voyage *J. N.* or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called, beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof aboard the said ship at *London* or elsewhere, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever should be arrived at *Rotterdam*, and during her stay there and thence to *Gambia*, and during her stay there and thence to *Cape Coast*, and the same there safely landed; and it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that insurance; the said goods and merchandizes by that agreement were and should be valued at ———, without farther account to be given by the assured for

for the same. Touching the adventures and perils which they the assurers were contented to bear, and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, surprizals, takings at sea, arrest, restraints and detainments of all kings, princes and people, of what nation, condition or quality soever, barratry of the master and mariners, and of all other perils, losses and misfortunes, that had or should come to the hurt, detriment or damage of the said goods and merchandizes, or any part thereof; and in case of any loss or misfortune it should be lawful for the assured, their factors, servants or assigns, to sue, labour and travel for and about the defence, safe-guard and recovery of the said goods and merchandizes, or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured; and it was agreed by them the assurers, that that writing or policy of insurance should be of as much force and effect as the surest writing or policy of insurance thentofore made in *Lombard-street*, or in the *Royal Exchange*, or elsewhere in *London*, and so they the assurers were contented, and did thereby promise, and bind themselves each one for his own part, their heirs, executors, and goods, to the assured, their executors,

administrators and assigns, for the due performance of the premisses, confessing themselves paid the consideration due to them for that assurance by the assured, at and after the rate of 3 *l.* 10 *s.* *per cent.* and in case of loss (which God forbid) the assured to abate 10 *l.* *per cent.* In witness whereof they the assurers have subscribed their names and sums assured in *London*, as by the said writing more fully appears; of which said writing the said *J.* afterwards, *to wit*, on the said 17th day of *October* in the said year of our Lord 1734 at *London* aforesaid, in the parish and ward aforesaid had notice, and thereupon the said *J.* afterwards, *to wit*, on the day and year last mentioned at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *R.* at the special instance and request of the said *J.* had then and there paid to the said *J.* the sum of 3 *l.* 10 *s.* of lawful money of *Great Britain* (being the reward of the assurance of 100 *l.*) and had promised to perform all things in the said writing contained on the part of the assured, to be performed for the assurance of 100 *l.* to be made by the said *J.* according to the tenor of the said writing, he the said *J.* took upon himself, and then and there faithfully promised to the said *R.* to become the assurer of the said *R.* for 100 *l.* to perform all and singular the things in the said writing contained to be performed on the part of the assurer, according to the true intent and

and meaning of the said writing (the said sum of 100 *l.* being the sum subscribed by the said *J.* to the said writing.) And the said *R.* in fact saith, that the said ship at the time of the making of the said writing, *to wit*, the said 17th day of *October* in the year 1734, was in safety, *to wit*, at *London* afore said, in the parish and ward afore said; and being so in safety afterwards, *to wit*, on the day and in the year last mentioned, the said ship last mentioned departed and sailed from *London* afore said, in the parish and ward afore said, with the said goods and merchandizes loaded thereon, to sail to *Rotterdam* afore said, and from thence to *Gambia* and *Cape Coast* afore said in her said voyage; and the said *R.* further saith, that the said ship in her said voyage from *Rotterdam* afore said, before her arrival at *Cape Coast* afore said, *to wit*, the 29th day of *March* which was in the year of our Lord 1735, in sailing in her said voyage with goods and merchandizes loaded, and then on board her, to the value of 700 *l.* of lawful money of *Great Britain*, upon the high seas was burnt and destroyed by fire, and the said ship and all the said goods and merchandizes were thereby then totally lost and destroyed, whereof the said *J.* afterwards, on the 1st day of *October* in the said year 1735, at *London* afore said, in the parish and ward afore said had notice, and the said *R.* then and there requested the said *J.* to pay to him the said *R.* 90 *l.* parcel of the

said 100 l. assured by him the said J. as aforesaid (deducting 10 l. the residue thereof) in respect of the said loss which the aforesaid J. ought to have paid to the said R. according to the said agreement; *Yet* the said J. not regarding his said promise and undertaking, but contriving, and fraudulently intending to deceive and defraud the said R. in this behalf, he the said J. (tho' often requested so to do) hath not paid to the said R. the said 90 l. or any part thereof, nor hath in any kind contented him for the same, but hath altogether refused, and yet refuses to pay to the said R. the said 90 l. or any part thereof, or in any manner to content him for the same.

A count for money had and received, damages 100 l.

*Declaration  
on Assumpsit  
to deliver  
goods accord-  
ing to agree-  
ment, earnest  
being given.*

London, to wit, J. P. late of *Westminster* in the county of *Middlesex*, chymist, was attached to answer unto N. G. in a plea, &c. That whereas the said J. the 29th day of *October* in the year of our Lord 1734 at *London*, in the parish of *St. Mary le Bow* in the ward of *Cheap*, had bargained and sold to the said N. 100 lb. weight of fine *Turkey Rhubarb*, at the rate of 28 s. per pound, amounting in the whole, according to that rate or price, to the sum of 115 l. the said J. the said 29th day of *October* at *London* aforesaid, in the parish and ward aforesaid, in consideration of 1 s. of good and lawful money of *Great Britain* to him the said J. by the said

said N. then and there in hand paid in part of payment, and of the sum of 114 l. 19 s. to the said J. by the said N. to be paid on the delivery of the said 100 lb. weight of fine *Turkey Rbubarb*, he the said J. did then and there undertake, and to the said N. then and there faithfully promise to deliver the said 100 lb. weight of the said fine *Turkey Rbubarb* upon the 30th day of the said month of *October* above-mentioned, at three of the clock in the afternoon of the same day at Mr. B.'s coffee-house; Yet the said J. not regarding his said promise and undertaking made as aforesaid, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said N. in this behalf, the said 100 lb. weight of fine *Turkey Rbubarb*, or any part thereof, to the said N. hath not delivered (although he the said N. was *always* prepared and ready upon the delivery of the said 100 lb. weight of fine *Turkey Rbubarb* in manner aforesaid then and there to have paid the said J. the said 114 l. 19 s. which together with the said 1 s. paid by the said N. to the said J. as aforesaid amount to 115 l. (that is to say) 23 s. for every pound weight of the said 100 lb. weight of the said fine *Turkey Rbubarb*, according to the agreement aforesaid) but the said J. hath hitherto neglected and refused, and still doth neglect and refuse to deliver to the said N. the said 100 lb. weight of fine *Turkey Rbubarb*.

Count for money had and received.

*Declaration  
on Assumpsit  
to pay for a  
gelding let to  
a third person  
if he did not  
return it.*

London, ss. J. P. late, &c. was attached to answer unto *W. C.* in a plea of trespass upon the case, &c. and whereupon the said *W.* by *R. B.* his attorney complains, that whereas on the — day of — in the year of our Lord 1734, at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap*, in consideration that the said *W.* at the special instance and request of the said *J.* would let to hire, and deliver unto a certain person then and yet unknown to the said *W.* a certain gelding of the said *W.* to ride from *London* aforesaid to *Highbgate* in the county of *Middlesex*, and so back again to *London* aforesaid, he the said *J.* undertook, and then and there faithfully promised the said *W.* to pay him *5 l. 5 s.* if that person did not return the said gelding to the said *W.* the same day; and the said *W.* doth aver, that he confiding in the aforesaid promise of the said *J.* afterwards, *to wit*, the same day and year abovesaid at *London* aforesaid, in the parish and ward aforesaid, at the said request of the said *J.* did let to hire, and deliver unto the said person so unknown to the said *W.* the said gelding of the said *W.* to ride from *London* aforesaid to *Highbgate* aforesaid, and so back again to *London* aforesaid; and that the said person so unknown to the said *W.* did not on the same day, or at any time afterwards, return the said gelding to the said *W.*

*W.* whereof the said *J.* had notice, and therefore the said *J.* according to his aforesaid promise and undertaking, ought to have paid unto the aforesaid *W.* the said sum of 5 *l.* 5 *s.* Yet the said *J.* not regarding his aforesaid promise and undertaking, &c.

Wilts, *to wit*, *E. D.* late, &c. and *R. Trover by assignees of commissioners of bankruptcy.* *M.* late, &c. were attached to answer *J.* *G.* and *R. P.* assignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the statutes made concerning bankrupts, of a plea of trespass upon the case, &c. and whereupon the said *J.* and *R.* by *S. S.* their attorney complain, that they the said *J.* and *R.* on the — day of — in the year of our Lord — at *Bradford* in the said county of *Wilts*, were possessed of 30 broad cloths of the value of 600 *l.* as of their own proper goods and chattels (they being as aforesaid assignees of the debts, goods and chattels of the said bankrupt) and being thereof so possessed, they the said *J.* and *R.* the said 30 broad cloths out of their hands and possession casually lost and mislaid; which said 30 broad cloths afterwards, *to wit*, the day and year aforesaid at *Bradford* aforesaid, came to the hands and possession of them the aforesaid *E.* and *R.* by finding; and though the aforesaid *E.* and *R.* knew the aforesaid cloths to be the proper goods and chattels of the aforesaid *J.* and *R.* and to them as assignees of the debts,

debts, goods and chattels of the said *S. L.* the bankrupt of right to belong and appertain: Yet they the aforesaid *E.* and *R.* contriving and fraudulently intending the aforesaid *J.* and *R.* of the aforesaid cloths to deceive and defraud, have not, nor hath either of them delivered the aforesaid cloths, or any of them to the aforesaid *J.* and *R.* although they have by them been often requested to deliver the same; But they the aforesaid *E.* and *R.* afterwards, to wit, the day and year aforesaid at *Bradford* aforesaid, to their own proper use did convert and dispose of the aforesaid cloths, to the damage of them the aforesaid *J.* and *R.* 600 *l.* And thereupon they bring this suit, &c.

*Declaration at the suit of an infant by his Prochien amy against a sheriff for a false return, where- by the plaintiff was taken on an attachment for a rescous.* Middlesex, to wit, *R. W.* late of *Westminster* in the county aforesaid, Esq; and *D. L.* late of the same, Esq; late sheriff of the county of *Middlesex*, were attached to answer unto *J. H.* of a plea of trespass on the case, &c. and whereupon the said *J. H.* by *J. H.* who is admitted by his majesty's court here to prosecute for the said *J. H.* who is within the age of 21 years, as the next friend of the said *J. H.* complaineth, that whereas on the 23d day of *January* in the term of *St. Hilary* in the 7th year of the reign of his present majesty a writ of his said majesty issued out of his said majesty's court of common bench here, to wit, at *Westminster* in the said county, directed to the then sheriff of *Middlesex*;

*Middlesex*; by which said writ the said sheriff was commanded, that he should take *J. H.* then late of *St. Giles's* in the said county, scavenger, and *J. D.* if they should be found in his bailiwick, and them safely keep, so that the said sheriff might have their bodies before the justices of his said majesty here, *to wit*, at *Westminster* aforesaid, from the day of *Easter* in 15 days then next following, to answer *T. B.* in a plea of trespass; and also that the said *J.* might answer the said *T.* according to the custom of the said court of Common Bench here, of a certain plea of trespass on the case upon promise, to the damage of him the said *T.* 20*l.* and that the said sheriff should then have there the said writ; which said writ afterwards, and before the return thereof, *to wit*, on the 9th day of *February* in the 7th year aforesaid, at *Westminster* aforesaid, was delivered to the said *R. W.* and *D. L.* then, and until and after the return of the said writ, being sheriff of the said county, to be executed in due form of law, *Yet* the said *R. W.* and *D. L.* then, and until and after the return of the said writ, being sheriffs as aforesaid, not regarding the duty of the said office of sheriff of the said county, but contriving and fraudulently intending to injure and oppress the said *J.* in this particular, afterwards, *to wit*, at the return of the said writ, did falsly, and in deceit of the said court here return to and upon the said writ to the justices of his

his said majesty here, *to wit*, at *Westminster* aforesaid, that by virtue of his said writ to him directed, he made his warrant directed to *S. L. J. D. and R. R.* his bailiffs of the hundred of *Ossulston*, jointly and separately to take and arrest the said *J. H.* in the said writ named, by virtue of which said warrant the aforesaid *S. L.* afterwards, and before the return of the said writ, *to wit*, on the 1st day of *April* in the 7th year aforesaid, at the parish of *St. Giles's in the fields* in the said county, within the said hundred of *Ossulston* in the said sheriff's bailiwick, did take and arrest the said *J. H.* according to the command of the said writ, and then and there kept him in safe custody, until *E. H.* wife of the said *J. H.* and the said *J.* by the name of *J. H. &c.* and divers other persons unknown to the said then sheriff, and to the said *S. L.* at the parish of *St. Giles's* aforesaid, with force and arms in and upon the said *S. L.* the said then sheriff's bailiff aforesaid, made an assault, and beat, wounded and ill-treated him, and then and there rescued, and each and every of them did then and there rescue the said *J. H.* out of the custody of the said *S. L.* the said then sheriff's bailiff aforesaid, against the said then sheriff's will, and against the will and without the consent of the said *S. L.* and him the said *J. H.* did permit to go at large where he pleased; and the said *J. H.* did then and there, with force and arms, rescue himself

self, and escaped out of the custody of the said *S. L.* the said then sheriff's said bailiff, against the said then sheriff's will, and without the consent of the said *S. L.* against the peace of the said lord the king; and afterwards and before the return of the said writ, the said *J. H.* was not found in the said then sheriff's bailiwick, and therefore the said then sheriff could not have the body of the said *J. H.* before his said majesty's justices at the day and place in the said writ mentioned, as by the said writ the said then sheriff was commanded, under pretence of which false return of the said writ, afterwards, *to wit*, on the 23d day of *October* in *Michaelmas* term in the 8th year of the reign of his said majesty, a writ of his said majesty issued out of his said majesty's court of Common Bench here, *to wit*, at *Westminster* aforesaid, according to the course and usage of the said court, directed to the now sheriff of the said county of *Middlesex*; by which writ the said now sheriff was commanded that he should not omit because of any liberty in his said county, but that he should take the said *E.* the said wife of the said *J. H.* and the said *J.* if they were to be found in the bailiwick of the said now sheriff, and safely keep them, so that the said now sheriff might have their bodies before his said majesty's justices here, *to wit*, at *Westminster* aforesaid, from the day of *St. Martin* in 15 days then next following, to answer to his said majesty of certain trespasses,

passes, rescues and contempts, certified by the said R. W. and D. L. late sheriff of the county of *Middlesex* aforesaid to his said majesty's justices at W. aforesaid, from the day of *Easter* in 15 days then last past, by virtue of which the said J. afterwards, and before the return of that writ, *to wit*, on the 11th day of *November* in the 8th year of the reign of his said majesty, at the said parish of *St. Giles's in the fields* in the county aforesaid, was attached, taken and imprisoned by M. P. and J. S. the said now sheriff of the said county of *Middlesex*, and kept in prison by them there for a long time, *to wit*, from thenceforth until the space of 33 hours then next following; and the said J. by reason of the premisses, was obliged to appear in the said court here, *to wit*, at *Westminster* aforesaid, at the return of the said writ, to answer to his said majesty for the said trespasses, rescues and contempts as aforesaid returned, according to the exigence of the said writ last above mentioned, and thereupon he the said J. H. with one R. J. and W. L. afterwards, *to wit*, on the 22d day of *November* in the term of *St. Michael* in the said 8th year of the reign of his said majesty, in his said majesty's court here, entered into a recognizance in the said court here, for the personal appearance of the said J. H. from the day of *St. Martin* in 15 days then next following, to answer all such matters as should be then and there objected against the said J. H.

and especially for his contempt on the rescous of the said *J. H.* returned by the said *R. W.* and *D. L.* the said late sheriff of *Middlesex* afore said, and so from day to day till the said *J. H.* should be discharged by the said court, and not depart the said court without leave of the same court; whereas the said *J. H.* in fact says, that he is in no wise guilty of the said supposed rescous and contempt lately returned against him as afore said, by reason of which false return of the said writ above-mentioned so made by the said *R. W.* and *D. L.* then sheriff as afore said, the said *J. H.* not only bore and sustained a long imprisonment as afore said, but he hath been put unto divers great costs and expences, amounting in the whole to a great sum, *to wit*, to the sum of 40*l.* to the damage of the said *J. H.* 90*l.* Therefore he bringeth this suit, &c.

London, *to wit*, *H. G.* late, &c. mari-  
ner, was attached to answer to *T. H.* in a  
plea of trespass upon the case, and where-  
upon the said *T.* by *G. N.* his attorney  
complains, that whereas the said *T.* on  
the 28th day of *December* in the year of  
our Lord 1735, at *London* afore said, was  
possessed of divers goods and merchandizes,  
*to wit*, of 1000 baskets of *Denia* raisins,  
of the value of 360*l.* then laden on board  
a certain lighter then being in the river  
*Thames*, and then moored at a certain  
key adjoining to the said river *Thames* at  
*London*

*Declaration in  
case for unskil-  
fully managing  
a ship, where-  
by she ran a-  
gainst a ligh-  
ter and da-  
maged pli's  
goods therein.*

*London* aforesaid; And whereas the said *H.* upon the said 28th day of *December* in the said year of our Lord 1735, at *London* aforesaid, was possessed of and master of a certain ship or vessel called the *Mary*, then being in the said river *Thames* near the said key, yet the said *H.* not being ignorant of the premisses, but devising and maliciously intending to hurt and injure the said *T.* in this behalf, upon the same day and year above mentioned at *London* aforesaid, so ill, unskilfully and negligently managed, governed and directed his said ship or vessel, that for want of good care and management of the said *H.* of his said ship or vessel, the said ship or vessel of the said *H.* then and there pressed against the said lighter, and broke one of the sides of the said lighter, whereby the water then and there flowed into the said lighter so laden with the said raisins as aforesaid, and very much damaged and spoiled the said raisins so laden therein, whereby he says he is prejudiced, and hath damage to the value of 100*l.* And thereupon he brings his suit, &c..

*Declaration  
against an inn-  
keeper for lo-  
sing a horse of  
his guest.*

*Yorkshire, to wit, W. J.* innkeeper of a common inn in *Cloughton* in the county aforesaid, was attached to answer *W. K.* of a plea of trespass upon the case, whereupon the said *W. K.* by *J. U.* his attorney complains, that whereas by the law and custom of this realm of *England*, innkeepers who keep common inns to entertain travellers passing along the country where

where are such common inns, and as guests lodging in the same inns safely and securely by night and day are bound to keep without any loss or diminution of their goods and chattels being within the said inns, so that by default of such innkeepers or of their servants no damage may in any wise happen to such guests; And also whereas the said *W. J.* on, and long before the 7th day of *November* in the 9th year of the reign of the lord the now king, and on the 1st day of *November* afore said did hold and keep, and yet doth hold and keep a common inn in *C.* afore said, in the county afore said; and the said *W. K.* the said 7th day of *November* in the said inn as a guest did lodge, the said *W. K.* then and there in the said inn having with him a certain mare of the said *W. K.* of the price of 5*l.* yet certain misdoers unknown to the said *W. K.* the said 7th day of *November* at *C.* afore said in the county afore said, in default of due keeping of the said *W. J.* and his servants the mare of the said *W. K.* then and there put and placed in the said inn, under the custody of the said *W. J.* in the said inn of the said *W. J.* by the said *W. K.* a guest of the said *W. J.* in the said inn took and carried away, and her detained from the said *W. K.* against the will of the said *W. K.* for a long time, to wit, for the space of one month, and then and there did her beat, bruise and lame, so that she became of no value, and other injuries to him did, to the great damage of the said *W. K.* and against the said

law and custom. *And also whereas* by the law and custom of this realm of *England*, all innkeepers, who keep common inns to entertain travellers passing along the country where such inns are, and as guests lodging in such inns, all their goods and chattels, and all the goods and chattels being in the lawful custody of such guests, being in the said inns night and day, are bound to keep without loss or diminution, so that for default of such innkeepers or their servants no damage may in any wise happen to such guests, or to the goods and chattels which are in the lawful custody of such guests within the said inns; And whereas the said *W. J.* on, and long before the 7th day of *November* in the 9th year of the reign of the lord the now king, and on the 1st day of *November* aforesaid in the same year, in his said inn at *C.* aforesaid in the county aforesaid, in his said inn did lodge the said *W. K.* as his guest, the said *W. K.* then and there having in his lawful custody another mare of *H. H.* then and there being the proper mare of the said *H. H.* of the price of 5*l.* by the said *H. H.* to the said *W. K.* before that time there lent, safely to be redelivered to the said *H. H.* yet certain misdoers unknown to the said *W. K.* the said 7th day of *November* at *C.* aforesaid in the county aforesaid, in default of due keeping of the said *W. J.* and his servants the said last mentioned mare then and there put and placed under the custody of the said *W. J.* in the said inn  
of

of the said *W. J.* by the said *W. K.* a guest in the said inn of the said *W. J.* took and carried away, and her there detained from the said *W. K.* for a long time, *to wit*, the space of 11 days, and her then and there beat, bruised and lamed, so that she became of no value; by reason whereof the said *W. K.* paid the said *H. H.* a great sum of money, *to wit*, 21 s. in satisfaction of the injury done to the said mare; and he the said *W. J.* other injuries did to the said *W. K.* to the great damage of the said *W. K.* and against the said law and custom; Whereupon the said *W. K.* saith that he is injured, and hath damage to the value of 10 l. And thereupon he brings this suit, &c.

Cumberland, *to wit*, *F. T.* late, &c. was attached to answer *W. H.* in a plea wherefore he with force and arms entered into a free chase of the said *W.* at *M.* in the county aforesaid, and without his license and consent in the same did hunt, and did take, kill and carry away hares, conies, pheasants and partridges; And also wherefore he with force and arms entered into the free warren of the said *W.* at *M.* aforesaid, and without his license and consent did there hunt, and take, kill and carry away other hares, conies, pheasants and partridges, and other injuries to him did, to the great damage of the said *W.* and against the peace of our lord the king; And whereupon the said *W.* by *T. B.* his attorney complains, that the aforesaid *F.*

*Declaration in trespass for entering and hunting in a chase or warren, and killing game.*

on the — day of — in the — year of the reign of his present majesty, and on divers other days and times between that day and the 1st day of *March* in the — year of the reign of his said majesty, with force and arms, &c. entered into the free chase of the said *W.* at *M.* aforesaid, and without his license and consent did in the same hunt, and did take, kill and carry away hares, *to wit*, 20 hares, conies, *to wit*, 40 conies, pheasants, *to wit*, 20 pheasants, and partridges, *to wit*, 20 partridges; And also that the said *F.* on the said several days and times aforesaid, with force and arms, &c. entered into the free warren of the said *W.* at *M.* aforesaid, and without his licence and consent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheasants, *to wit*, 20 other pheasants, and partridges, *to wit*, 20 other partridges, and other injuries, &c. to the great damage, &c. and against the peace, &c. whereupon the said *W.* saith that he is prejudiced, and hath received damage to the value of 20*l.* And thereupon he bringeth suit, &c.

*Declaration in  
case for detain-  
ing plt.'s ap-  
prentice.*

Derbyshire, *to wit*, *W. L.* late, &c. was attached to answer *J. T.* of a plea of trespass upon the case, &c. and whereupon the said *J.* by *W. W.* his attorney complains, that whereas *W.* the son of *W. M.* of, &c. by his certain indenture bearing date the — day of — in the year of

of our Lord — at — aforeſaid, was juſtly and lawfully retained in the ſervice of him the ſaid J. after the manner of an apprentice, to be inſtructed in the art of a cutler, which the aforeſaid J. then uſed, until the end and term of 9 years from thence next enſuing and fully to be complete and ended. And the ſame W. M. the ſon ſerved for the ſpace of 3 years and upwards next after the ſaid — day of — in the year aforeſaid, in the ſervice of him the ſaid J. in his art aforeſaid as an apprentice; Nevertheless the aforeſaid W. L. not ignorant of the premiſſes, but contriving craftily and ſubtilly to deceive and defraud him the ſaid J. of the ſervice of his ſaid apprentice, and of all profit, advantage and gain, which he the ſaid J. by reaſon of his apprentice aforeſaid ſhould and might have and gain, afterwards during the ſaid term of 9 years, *to wit*, on the 1ſt day of July in the year of our Lord — at — aforeſaid in the ſaid county, knowing the aforeſaid W. M. the ſon to be the apprentice of him the ſaid J. did wrongfully intice and procure him the ſaid W. M. the ſon to depart from the ſaid ſervice of him the ſaid J. which ſaid apprentice of the ſaid J. afterwards, *to wit*, the ſame day and year, by reaſon of the ſaid inticements and procurements of the ſaid W. L. without any reaſonable or probable cauſe whatſoever left the ſervice of the ſaid J. his maſter, and abſented himſelf from his ſaid ſervice for a long

time, *to wit*, for a month then next following, and the said *W. L.* injuriously detained and kept him the said *W. M.* the son from his service aforesaid during that time, against the will of the said *J. to wit*, at — aforesaid, whereby the said *J.* for all that time lost the service of his apprentice aforesaid; *And whereas* the said *W. M.* the son, afterwards, and during his said apprenticeship, *to wit*, on the 2d day of *August* in the year of our Lord — without any reasonable cause or just pretence absented himself from the service of his said master, *to wit*, at — aforesaid; Nevertheless the said *W. L.* well knowing the premisses, but contriving and intending further to injure the said *J.* and to deprive him of the further use, service and benefit of his said apprentice *W. M.* the son, afterwards, *to wit*, on the said 2d day of *August* in the year of our Lord — aforesaid, at — against the will of the said *J.* injuriously received the said *W. M.* the apprentice into his service, and detained and kept him from the service of the said *J.* his master for a long time, *to wit*, from thenceforth until the 1st day of *January* then next following, whereby the said *J.* for all that time lost the service of his said apprentice, to the damage of the said *J.* of 40 *l.* And thereupon he brings suit, &c.

*Declaration for taking and detaining plt.'s wife.*

Herefordshire, *to wit*, *R. S.* was attached to answer *W. B.* Gentleman of a plea, wherefore he took *S.* the wife of the said *W.*

*W.*

*W.* and keeps her taken, &c. and whereupon the said *W.* by *J. C.* his attorney complains, that the said *R.* on the 1st day of *June* in the year of our Lord 1734. at the parish of *Bodenham* in the county aforesaid, took the said *S.* the wife of the said *W.* and keeps her yet taken, whereby he says that he is prejudiced and damified to the value of 500*l.* And thereupon he brings suit, &c.

Suffolk, *to wit*, *M. W.* late, &c. Malster, Declaration was attached to answer to *S. F. Gent.* in a *for carrying away plt.'s wife, goods and chattels.* plea, wherefore with force and arms he took and carried away *T.* the wife of the said *S.* together with the goods and chattels of the said *S.* of the value of 500*l.* found at *Stowmarket* aforesaid, and detained the said *T.* the said wife of the said *S.* there from the said *S.* a long time, whereby the said *S.* lost the aid, comfort, fellowship, service and assistance of his said wife, and detained for a long time the said goods and chattels, and doth still detain the same, and did other wrongs to the said *S.* to the great damage of the said *S.* and against the peace of his present majesty, &c. And whereupon the said *S.* by *T. K.* his attorney complains, that the said *M.* on the 15th day of *May* in the year of our Lord 1733. at *S.* aforesaid in the county aforesaid, with force and arms, &c. took and carried away the said *T.* then and now the wife of the said *S.* together with the goods and chattels of the said *S.* *to wit*,

a gold watch, a watch-chain and picture set in gold, one pair of ear-rings of gold set with diamonds, two other gold rings, four gowns, four petticoats, one cloth cloak, one velvet hood, 20 holland shifts, two head-dresses of lace, and two other head-dresses of cambrick and lace, of the value of 200*l.* found at *S.* aforesaid; and detained the said *T.* the said wife of the said *S.* there from the said *S.* a long time, *to wit*, from the said 15th day of *May* in the said year of our Lord 1733. until the 18th day of *October* in the year of our Lord 1735. whereby the said *S.* during all that time lost the aid, comfort, fellowship, service and assistance of his said wife; and also during all the time aforesaid detained the said goods and chattels, and doth still detain the same, and did other wrongs, &c. to the great damage, &c. and against the peace, &c. whereby the said *S.* says that he is injured, and hath damage to the value of 2000*l.* And thereupon he brings suit, &c.

*Declaration  
for carnally  
knowing plt.'s  
wife.*

Devon, *to wit*, *G. F.* late, &c. was attached to answer *E. F.* of a plea, wherefore with force and arms he made an assault upon *M.* the wife of the said *E.* at *K.* in the said county, and her the said *M.* debauched, abused, carnally knew and got with child, whereby the said *E.* for a long time lost the comfort and affection, and also the counsel, assistance and service of his said wife in his domestic affairs, and did

did him other wrongs, to the great damage of the said *E.* and against the peace of our lord the king, &c. And whereupon the said *E.* by *T. W.* his attorney complains, that the said *G.* upon the 11th day of *November* 1732. and at diverse other days and times between that day and the 4th day of *October* in the year of our Lord 1733. with force and arms made an assault upon *M.* then the wife of the said *E.* at *K.* aforesaid in the county aforesaid, and her the said *M.* then and there debauched, abused, carnally knew and got her with child, whereby the said *E.* for all the time aforesaid lost the comfort and affection, and also the counsel and assistance, and service of his said wife in his domestic affairs, and did him other wrongs, to the great damage of the said *E.* and against the peace, &c. Whereupon he says he is injured and hath damage to the value of 1000*l.* And thereupon he brings this suit, &c.

Gloucestershire, to wit, *P. L.* late, &c. *Declaration in*  
late rector of the parish church of *B.* in *case for dilapi-*  
the said county of *G.* was attached to an- *dations in not*  
swer to *W. A.* clerk, now rector of that *repairing*  
church, in a plea of trespass on the case, *chancel, &c.*  
&c. and whereupon the said *W. A.* by *T. M.*  
his attorney complains, that whereas all  
and singular rectors of churches within  
that part of his majesty's kingdom of  
*Great Britain* called *England*, for the time  
being, ought by law well and sufficiently  
to

to repair, support and sustain the chancels of their churches, and the walls and fences of their church-yards, and all and singular the houses, edifices, buildings and structures of and belonging to their rectories, and the walls and fences of their glebe lands thereof, and relinquish, yield up and leave the same without any dilapidations, or want of reparation whatsoever, to their successors, rectors of such churches, and in default thereof are bound and ought to pay and satisfy their successors the full and true value of such dilapidations and want of reparations. *And whereas* the said *P.* was heretofore lawfully instituted, and inducted into the said rectory and parish church of *B.* and on the 1st day of *November* in the year of our Lord 1733. was the lawful rector thereof, and in right of the said rectory was seised of a mansion-house, called the parsonage-house in the said parish of *B.* with the barns, stables, out-houses, edifices, buildings, yards, courts, gardens and appurtenances thereunto belonging; and also of several pieces or parcels of glebe land, parcel of the said rectory, and so continued until such time as herein after is mentioned, and afterwards, *to wit*, on the 25th day of the said month of *November* in the said year of our Lord 1733. freely resigned the said rectory and parish church into the hands of *E.* late lord bishop of *G.* deceased, then ordinary of that place, and thereupon the said church being vacant

cant by means of such resignation; And the said *W. A.* afterwards, *to wit*, the 18th day of *December* in the year aforesaid, was upon such vacancy duly presented to the said church, and admitted, instituted and inducted into the same, and became, and hath continued, and now is the lawful rector of the said church, and the next successor of the said *P.* and the said *W. A.* in fact says, that at the said time of the resignation of the said rectory and parish church by the said *P.* the chancel of the said parish church, and the walls and fences of the church-yards thereof, and the said mansion or dwelling-house called the parsonage-house, part of and belonging to the said rectory, the brewhouse thereto adjoining, the barn, the stables, the coach-house, cart-house, the granary, the necessary-house, the chicken-house, and other out-houses, edifices and buildings belonging to the said mansion-house, the mound-walls round the garden and courts likewise belonging to the same house, the stone steps in the said garden, and the rails on each side of such steps, and also the walls and fences of the glebe lands, part also of the said rectory, were very ruinous, and greatly dilapidated, and in decay for want of repairs, and were so left by the said *P.* when he resigned the said rectory and church as aforesaid, *to wit*, on the 25th day of *November* in the said year of our Lord 1733. And the said *W. A.* further saith, that the sum of money

ney necessary to be expended and laid out for the necessary repairs of the said premisses amounts to, and at the time of the said resignation of the said rectory and parish church by the said P. amounted to 200 l. of lawful money of *Great Britain*, of which the said P. afterwards, *to wit*, on the 20th day of the said month of *December* in the said year 1733, at B. aforesaid, had notice: *Nevertheless* the said P. intending to defraud the said W. in this behalf, the said sum of 200 l. or any part thereof, or any other sum of money sufficient for the necessary reparation of the said premisses, so left by the said P. dilapidated, and in such a ruinous condition for want of repairs as aforesaid, to the said W. hath not paid or satisfied, although the said P. was afterwards, *to wit*, the said 20th day of *December* in the year last above-mentioned, at the said parish of B. in the said county of G. requested by the said W. so to do; but the said P. has hitherto refused and still refuses to pay or satisfy the same, or any sum of money whatsoever to the said W. for such want of repairs and dilapidations as aforesaid, to the damage of the said W. of 200 l. And thereupon he brings suit, &c.

*Declaration in prohibition.*

Northamptonshire, *to wit*, T. K. late, &c. was attached to answer to R. B. who prosecutes in this behalf as well for the king as for himself in a plea, why he the said T. has followed a plea against the said R.

R. in the spiritual court against the king's prohibition, &c. and whereupon the said R. who as well, &c. by T. S. his attorney complains, that whereas the parish of *Towcester* aforesaid is, and from the time beyond the memory of man was an ancient parish, within which parish for all that time there was and is an ancient parish church; and whereas he the said R. B. now is, and for divers years last past was seised in his demesne as of fee of and in an ancient messuage, with the appurtenances, in the parish of *Towcester* aforesaid, now or late in the tenure or occupation of L. R. and he the said R. B. and all those whose estates he had and hath of and in the said messuage, with the appurtenances, from time beyond the memory of man have at their own costs repaired one seat or form in the said church, which seat or form has been lately taken in and made parcel of a pew in the said church, and therefore have had and used for themselves and family inhabiting in the said messuage the sole and separate use of the said seat or form for the hearing and attending of divine service in the said church. *And whereas* all pleas and suits of and concerning customs and prescriptions within this realm, and the cognizance of such pleas and suits, specially belong and appertain to his majesty and his royal crown, and not to the court christian, and by the common law of the land of this kingdom of *England*, and not by  
the

the ecclesiastical laws or censures ought to be tried, determined and discussed, and always hitherto were wont and ought: Nevertheless the said *T. K.* well knowing the premisses, but contriving unjustly to grieve the said *R. B.* and to disherit his said majesty and his royal crown, and to bring the cognizance of a plea which specially belongs to his present majesty and his royal crown to another sort of trial in the court christian before the venerable *G. R.* doctor of laws, lawfully deputed vicar general in spirituals, and principal official of the reverend father in Christ and lord *R.* by divine permission bishop of *Peterborough*, or his surrogate, has impeach'd and controverted his suit, the right, title and possession of the said *R. B.* to the said seat or form, now parcel of the said pew; And although the said *R. B.* hath pleaded and alledged all and singular the matters above by him here suggested in the said court christian before the said spiritual judge, in maintenance of his said right and possession of the said seat or form in the said pew, and offered to prove the same by inevitable testimony; Yet the said spiritual judge wholly refused to admit the said allegation and proof, and the said *T. K.* endeavours and daily contrives to cause the said *R. B.* to be condemned in the premisses in the said court christian, before the said spiritual judge, in contempt of his said present majesty, and to the manifest damage, prejudice, impoverishment

ment and grievance of the said *R. B.* and against the common law of *England*. And although he the said *R.* afterwards, *to wit*, on the 20th day of *January* in the year of our Lord 1733, at the parish aforesaid, delivered to the said *T. K.* the king's writ of prohibition to the contrary thereof; Nevertheless the said *T. K.* hath not ceased to follow his said suit in the said spiritual court, but has since that time prosecuted and still prosecutes his said suit there, notwithstanding the said writ of prohibition so delivered to him as aforesaid, in contempt of his said majesty, and to the great damage and grievance of the said *R.* and against the said prohibition; Whereupon the said *R.* who as well, &c. saith that he is injured, and hath damage to the value of 40*l.* And thereupon he as well for the king as for himself brings suit, &c.

Westmorland, *A. B.* late, &c. was summoned to answer *C. D.* son and heir at law of *E. D.* deceased, of a plea, that he render to him 14*l.* of lawful money of *Great Britain*, which he owes to, and unjustly detains from him, &c. and thereupon the said *C.* by *W. R.* his attorney saith, that whereas the said *E.* in his lifetime, *to wit*, on the 24th day of *January* in the year of our Lord 1726, at *Kirby K.* aforesaid, by a certain indenture then and there made between the said *E.* by the name of ———, (as in the lease) of the one part, and the said *A.* by the name of ———,

*Declaration in debt for rent reserved by indentures, at the suit of the heir.*

—, (*as in the lease*) of the other, the other part of which indenture, sealed with the seal of the said *A.* the said *C.* brings here into court, the date whereof is the same day and year, demised, leased, set, and to farm let unto the said *A.* his executors, administrators and assigns, all his the said *E.*'s burgage house, messuage and tenement, situate, standing and being at or near *Strickland gate end* (*so recite the parcels as in the lease*) to have and to hold the said burgage house, messuage and tenement, barn, &c. and all and singular other the premisses by the said indenture demised, with the appurtenances (except before excepted) unto the said *A.* his executors, administrators and assigns, from the 2d day of *February* next ensuing the day of the date of the said indenture, for and during and unto the full end and term of 21 years from thence next ensuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the said term, unto the said *E.* his heirs and assigns, the yearly rent or sum of 14*l.* of lawful money of *Great Britain*, at two days or times of payment in the year, that is to say, at *Whitsuntide* and *St. Martin* the bishop in winter, by even and equal portions; the first payment to begin and be made at *Whitsuntide* then next ensuing, as by the said indenture may more fully appear; by virtue of which said demise the said *A.* entered into the said demised premisses with the appur-

tenances (except before excepted) and was possessed thereof for the term thereof demised as aforesaid, the reversion thereof, with the appurtenances, belonging to the said *E.* his heirs and assigns; and being so possessed, the reversion thereof belonging as aforesaid to the said *E.* afterwards, *To wit*, the 1st day of *April* in the year of our Lord 1733, at *K.* aforesaid died seised of such his estate of and in the said reversion, at whose death the said reversion, with the appurtenances, descended to the said *C.* as son and heir of the said *E.* whereby the said *E.* became, and was seised of and in the said reversion with the appurtenances; and being so seised, and the said *A.* being so possessed of the said demised premisses with the appurtenances, 14*l.* of the rent aforesaid, for one year ending at the feast of *St. Martin* the bishop in the winter, in the year of our Lord 1734, to the said *C.* from the said *A.* became in arrear, and still remain unpaid, whereby an action hath accrued to the said *C.* to demand and have of the said *A.* the said 14*l.* yet the said *A.* (although often requested) hath not yet paid the said 14*l.* or any part thereof, to the said *C.* but to pay the same to him hitherto altogether hath and still doth refuse, to the damage of the said *C.* 10*l.* And therefore he bringeth suit, &c.

*Declaration  
in debt for  
rent reserved  
by indenture  
against the  
assignee of  
the lessee.*

Middlesex, to wit, *J. L.* late of *Tottenham* in the county of *Middlesex*, Esq; assignee of *J. S.* Esq; otherwise lately called *J. S.* senior of *London*, Esq; was summoned to answer *G. B.* Esq; in a plea, that he render to him 6 *l.* 12 *s.* 6 *d.* which he owes to him and unjustly detains, &c. and whereupon the said *G.* by *E. B.* his attorney says, that whereas by a certain indenture made at *Tottenham* aforesaid, on the 17th day of *May* in the year 1716, between the said *G.* by the name of *G. B.* of *Leatherhead* in the county of *Surrey*, Esq; of the one part, and the said *J. S.* by the name of *J. S.* senior, of *London*, Esq; of the other part, the counterpart of which indenture sealed with the seal of the said *J.* the said *G.* brings here into court, bearing date the same day and year, for the consideration therein mentioned he the said *G.* did demise, grant and to farm let unto the said *J. S.* all that mansion-house, messuage, tenement, wash-houses, stables, out-houses, yards, gardens, orchards, fish-pond or canal, with the appurtenances, which were then lately in the tenure or occupation of *R. C.* his under-tenants or assigns; And which said mansion-house and premisses abutted eastward on a field called the *Royal Field*, belonging to *T. M.* of *London*, goldsmith, westward on *Tottenham* high road, northward on a barn and orchard belonging to the said *G. B.* in the tenure or occupation of the said *W. B.* and southward on a garden belonging to the said *G.*

*B.*

*B.* in the tenure or occupation of the said *W. B.* and also that little messuage and tenement built upon the wall belonging to the said mansion-house, fronting also upon the high road of *Tottenbam* aforesaid, then also in the tenure or occupation of the said *W. B.* his under-tenants or assigns, together with all ways, easements, water-courses, commodities and appurtenances whatsoever to the said mansion-house, messuages or tenements belonging or in any wise appertaining; all which said premisses are situate and being in the parish of *Tottenbam High Cross* in the county of *Middlesex*; To have and to hold the said mansion-house, messuages or tenements, wash-houses, stables, out-houses, yards, gardens, orchards, fish-pond or canal, and all other the premisses, with their and every of their appurtenances above by the said indenture demised and granted unto the said *J.* his executors, administrators, and assigns, from the feast-day of the annunciation of the blessed virgin *Mary* last past before the date of the said indenture, for and during and unto the full end and term of 21 years from thence next ensuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the said term unto the said *G.* his heirs and assigns, the yearly rent or sum of 26 *l.* 10 *s.* of lawful money of *Great Britain*, on the four feast-days or terms of payment in the year most usual, that is to say, at the feast of the nativity

of St. *John* the baptist, St. *Michael* the archangel, the birth of our Lord Christ, and the annunciation of the blessed virgin *Mary*, by even and equal portions; the first payment thereof to begin and to be made upon the feast-day of St. *John* the baptist next ensuing the date of the said indenture, as by the said indenture more fully appears; by virtue of which demise the said *J.* entered into the said demised premises with the appurtenances, and was thereof possessed; and being so possessed thereof, afterwards, *to wit*, on the 1st day of *April* in the year of our Lord 1734, all the said estate, right, title, interest and term of years of the said *J.* then to come and unexpired, of and in the said demised premises with the appurtenances, by an assignment came to the said *J. L.* by virtue of which assignment the said *J. L.* entered into the said demised premises with the appurtenances, and was possessed thereof until the expiration of the said term of 21 years, *to wit*, until and upon the feast of the annunciation of the blessed virgin *Mary* in the year of our Lord 1737, and 6 l. 12 s. 6 d. of the rent aforesaid, for the last quarter of a year of the said term on that feast became due and in arrear from the said *J. L.* to the said *G.* by reason of which an action accrued to the said *G.* to demand and have of the said *J. L.* the said 6 l. 12 s. 6 d. Nevertheless the said *J. L.* (although often requested) has not rendered to the said *G.* the said 6 l. 12 s. 6 d.

6 d. or any part thereof; but has hitherto wholly denied, and still doth deny to render the same to the said G. whereby the said G. says that he is injured, and hath damage to the value of 40 s. And thereupon he brings suit, &c.

And the said J. L. by J. D. his attorney comes and defends the force and injury, when, &c. and as to the sum of 6 l. 12 s. 6 d. which the said G. above by his said declaration supposeth to have been become due and in arrear for the rent of the said premisses from the said J. L. to the said G. upon the feast of the annunciation of the blessed virgin *Mary* in the year of our Lord 1737, for the last quarter of a year of the said term on that feast in the said declaration mentioned, the said J. L. saith that no part thereof is due and in arrear to the said G. as the said G. by his said declaration above supposeth; And of this he puts himself upon the country, &c.

Staffordshire, to wit, The inhabitants of the hundred of *Pirehill* in the county of *Stafford* were attached to answer as well to our sovereign Lord the now king as to *H. W.* who as well for the same lord the king as for himself in this behalf sues of a plea, wherefore whereas in a certain statute made in the parliament of the sovereign lord *Edward I.* late king of *England*, held at *Westminster* in the 13th year of his reign (amongst other things) it is ordained

dained, Forasmuch as from day to day robberies, murders, burning of houses and theft were then more often used than they had been theretofore, and felons could not be attainted by the oaths of jurors, who had rather suffer strangers to be robbed, and to pass without pain, than to indict the offenders, great part of whom were people of the same country; or at the least if the offenders were of another country, the receivers were of places near, and they did the same because an oath was not given unto jurors of the same country where such felonies were done; and as to the restitution of damages before that time, no pain had been limited for their concealment and laches, the said lord the late king for to abate the power of felons, had established a pain in that case, so that from thenceforth for fear of the pain more than for fear of any oath, they should not spare any, nor conceal any felonies. And the said lord the late king did command, that cries should be solemnly made in all counties, hundreds, markets, fairs, and all other places where great resort of people was, so that none should excuse himself by ignorance, that from thenceforth every country should be so well kept, that immediately upon such robberies and felonies committed, fresh suit should be made from town to town, and from country to country; likewise when need is required, inquest should be made in towns by him that was lord of the town,

town, and after in the hundred and in the franchise, and in the county, and sometimes in two or three or four counties, in case when felonies should be committed in the marches of shires, so that the offenders might be attainted; and if the country would not answer for the bodies of such manner of offenders the pain should be such, that every country, (that is to say) the people dwelling in the country, should be answerable for the robberies done, and all the damages, so that the whole hundred where the robberies should be done, with the franchises, being within the precinct of the same hundred, should be answerable for the robberies so done; and if the robbery should be done in the division of two hundreds, both the hundreds, and the franchises within them, should be answerable; and after that the felony or robbery was done, the countries should have no longer space than 40 days, within which it should behove them to agree for the robbery or offence, or else that they should answer for the bodies of the offenders, as is plainly contained in the aforesaid statute; *And for that whereas* two certain robbers to the said *H. W.* unknown, on the 5th day of *May* in the 10th year of the reign of the said lord the now king, in the king's highway within the hundred of *Pirebill* aforesaid in the said county of *Stafford*, to wit, at a certain place near *Weston*, commonly called *Wodden Lane*, between *Weston* and *Amerton* in

Stat. 27 Eliz.  
c. 13.

the parish of *Weston* in the said county of *Stafford*, within the hundred of *Pirebill* afore-  
said in the county of *Stafford* afore-  
said with force and arms upon him the  
said *Henry* made an assault, and 25 l. in  
money of lawful money of *Great Britain*,  
of the proper monies of him the said *H. W.* and also a leather purse value 6 d. of  
like lawful money of *Great Britain*, of the  
proper goods and chattels of him the said  
*H. W.* then and there found, of and from  
him the said *H. W.* did feloniously take  
and rob and carry away, against the said  
peace of our said lord the now king; and  
the said *H. W.* immediately after the  
felony and robbery afore-  
said done at *Wod-*  
*den Lane* afore-  
said in the said parish of  
*Weston*, within the hundred of *Pirebill*  
afore-  
said in the county afore-  
said, being  
near the said place where the same felony  
and robbery so as afore-  
said was commit-  
ted, did make hue and cry of the afore-  
said felony and robbery upon him made, and  
then and there did give notice to the inha-  
bitants of the parish of *Weston* afore-  
said of the same felony and robbery; and did also,  
with as much convenient speed as might be  
after the afore-  
said robbery on him commit-  
ted as afore-  
said, give notice hereof to *T. W.*  
then a constable of the said parish of *Weston*  
afore-  
said in the said hundred of *Pire-*  
*bill*, being near unto the place where the  
said robbery was committed as afore-  
said, and describe in the afore-  
said notice to the  
afore-  
said constable, so far as the nature  
and

and circumstances of the case did admit, the said felons, and the time and place of the aforesaid robbery; and did also, within the space of 20 days next after the aforesaid robbery committed, cause public notice to be given thereof in the *London Gazette*, and did therein likewise describe, so far as the nature and circumstances of the said case did admit, the said felons, and the time and place of the aforesaid robbery, together with the said money, goods and effects whereof he the said *H.* was robbed as aforesaid, and afterwards did, and before the suing forth of the original writ of him the said *H.* to wit, on the 15th day of *October* in the 11th year of the reign of the said lord the now king, he the said *H.* went before the sheriff of the county of *Stafford* aforesaid, and did then before the said sheriff enter into a bond to *T. B.* and *J. G.* then being high constables of the hundred of *Pirehill* aforesaid, in the penal sum of 100 *l.* with two sufficient sureties, to wit, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the same place, carpenter, approved by the said sheriff, with condition for securing to the said high constables the due payment of their costs, after the same should be taxed by the proper officer, in case that he the said *H. W.* should happen to be nonsuited, or should discontinue his action to be brought against the said inhabitants of the hundred of *Pirehill* aforesaid, on account of the aforesaid robbery;

Stat. 6 Geo. 2.  
c. 16.

Stat. 27 Eliz.  
c. 13. §. 11.

bery; or in case that judgment should be given against him the said *H. W.* on demurrer, or that verdict should be given against him therein, according to the form and directions of the statute in such case lately made and provided; and after the felony and robbery aforesaid done, and within 20 days next before the day of the suing forth of the said original writ of him the said *H. W.* he the said *H. W.* before *T. W.* Esq; then one of the justices of our said lord the now king assigned to keep the peace of our said lord the now king, in and for the county of *Stafford* aforesaid, then inhabiting at *Haywood* in the parish of *Colwick* within the hundred of *Pirehill* aforesaid in the county of *Stafford* aforesaid, was examined upon his corporal oath, according to the form of the statute in that case made and provided, and the said *H. W.* upon his said oath before the said *T. W.* then and there said, that he did not know the parties who had committed the aforesaid robbery, or either of them; and after the felony and robbery upon him made as aforesaid, and after the said public notice given of the aforesaid robbery in the aforesaid *London Gazette*, 40 days of the suing forth of the said original writ of the said *H.* were past; yet the said inhabitants of the hundred of *Pirehill* aforesaid in the county of *Stafford* aforesaid, have not hitherto made to the said *H. W.* satisfaction for the robbery and damages aforesaid, nor the bodies of the felons and male-

malefactors aforesaid, nor the bodies of either of them, have taken, nor for the bodies of them, nor for the bodies of either of them hitherto have answered, but the same felons and malefactors have permitted to escape, in contempt of the said lord the now king, and to the great damage of him the said *H. W.* and against the said form of the statute aforesaid in the aforesaid 13th year of the reign of the said late lord king *Edward I.* in such case made and provided; and whereupon the said *H.* who, as well for the said lord the now king as for himself in this behalf sues, by *R. D.* his attorney complains, that certain robbers, *to wit*, two men, to the same *H. W.* unknown, on the aforesaid 3th day of *May* in the aforesaid 10th year of the reign of the said lord the now king, in the king's highway within the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid, *to wit*, at a certain place near *Weston* aforesaid, commonly called *Wodden Lane*, between *Weston* and *Amer-ton* in the parish of *Weston* in the said county of *Stafford*, within the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid, with force and arms, *to wit*, with pistols, swords, staves and knives in and upon him the aforesaid *H.* did make an assault, and 25 *l.* in money of lawful money of *Great Britain*, of the proper monies of him the said *H. W.* and also a leather purse value 6 *d.* of like lawful money of *Great Britain*, of the proper goods and chattels

chattels of him the said *H. W.* then and there found, of and from the said *H.* did feloniously take and rob and carry away, against the peace of our said lord the now king, &c. And the said *H.* immediately after the felony and robbery aforesaid done, *to wit*, on the said 5th day of *May* in the 10th year of the reign of the said lord the now king aforesaid, at *Wodden Lane* aforesaid in the said parish of *Weston* within the hundred of *Pirebill* aforesaid in the county aforesaid, which said place called *Wodden Lane* is, and then was near the said place where the said felony and robbery so as aforesaid was committed, did make hue and cry of the felony and robbery aforesaid upon him made, and then and there give notice to the inhabitants of the said parish of *Weston* of the same felony and robbery; and did also, with so much convenient speed as might be after the aforesaid robbery on him committed as aforesaid, that is to say, on the said 6th day of *May* in the 10th year aforesaid, give notice thereof to *T. W.* then a constable of the said parish of *Weston* aforesaid in the said hundred of *Pirebill*, being near unto the place where the said robbery was committed as aforesaid; and did describe in the aforesaid notice to the aforesaid constable, so far as the nature and circumstances of the case did admit, the said felons and the time and place of the aforesaid robbery; and did also, within the space of 20 days next after the aforesaid robbery

robbery committed, cause public notice to be given thereof in the *London Gazette*, and did therein likewise describe, so far as the nature and circumstances of the said case did admit, the said felons and the time and place of the aforesaid robbery, together with the said money, goods and effects whereof he the said *H.* was robbed as aforesaid, and afterwards, and before the suing forth of the original writ of him the said *H. to wit*, on the 15th day of *October* in the 11th year of the reign of the said lord the now king aforesaid, he the said *H.* went before the sheriff of the county of *Stafford* aforesaid, and did then before the same sheriff enter into a bond unto *T. B.* and *J. C.* high constables of the hundred of *Pirebill* aforesaid, in the penal sum of 100 *l.* with two sufficient sureties, to wit, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the same place, carpenter, approved by the said sheriff, with the condition for securing to the said high constables the due payment of their costs, after the same should be taxed by the proper officer, in case that he the said *H. W.* should happen to be nonsuited, or should discontinue his action to be brought against the said inhabitants of the hundred of *Pirebill* aforesaid on account of the aforesaid robbery, or in case that judgment should be given against him the said *H. W.* on demurrer, or that a verdict should be given against him therein, according to the form and direction of the statute in  
such

such case lately made and provided; and after the felony and robbery aforesaid done, and within 20 days next before the day of the suing forth of the original writ of him the said *H. W.* to wit, on the aforesaid 15th day of *October* in the 11th year of the reign of our said lord the now king aforesaid, he the said *H. W.* before the said *T. W.* Esq; then one of the justices of the said lord the now king, assigned to keep the peace of the same lord the now king in and for the county of *Stafford* aforesaid, then inhabiting at *Haywood* in the parish of *Colwick* within the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid, was examined upon his corporal oath, according to the form of the statute in that case made and provided; and the said *H. W.* upon his said oath then and there before the said *T. W.* said, that he did not know the parties who had committed the aforesaid robbery, or either of them, and after the felony and robbery upon him made as aforesaid, and after the said public notice given of the aforesaid robbery in the aforesaid *London Gazette*, 40 days of the day of suing forth of the said original writ of the said *H.* were past; Yet the said inhabitants of the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid have not hitherto made to the said *H. W.* satisfaction for the robbery and damages aforesaid, nor the bodies of the said felons and malefactors aforesaid, nor the bodies of either of them have taken,

nor for the bodies of them, nor for the bodies of either of them, hitherto have answered, but the same felons and malefactors have permitted to escape, in contempt of the said lord the now king, and to the great damage of him the said *H. W.* against the form of the statute aforesaid, in the aforesaid 13th year of the reign of the said late lord king *Edward* the First in such case made and provided; whereupon the said *H. W.* who as well for the said lord the now king as for himself sues, says that he is detrimented and hath damage to the value of 40*l.* And thereupon he brings this suit, &c.

And the said inhabitants in the hundred of *Pirebill* by *H. D.* their attorney come and defend the force and injury, when, &c. and say, that they are no wise guilty of the premisses above laid to their charge, as the said *H. W.* who as well, &c. above complains against them: And of this they put themselves upon the country; and the said *H. W.* who as well, &c. does likewise the same: And thereupon the same *H. W.* says, that the inhabitants in the hundred of *Pirebill* aforesaid where the robbery was committed are parties defendants, against whom the said *H. W.* who as well, &c. above in form aforesaid complains, and for that cause craveth the writ of the lord the king to be directed to the sheriff of the county aforesaid, to cause to come twelve, &c. of the vicinity of the hundred of *Offlow* in the county

*Plea,*  
*Not guilty.*

*Issue.*  
*Venire of the*  
*next adjacent*  
*hundred.*

county aforesaid, which said hundred of *Offlow* is the next hundred in the same county adjacent to the aforesaid hundred of *Pirehill*, to try the issue aforesaid above in form aforesaid joined: And because the said inhabitants in the aforesaid hundred of *Pirehill* do not deny this, it is granted to him; therefore the sheriff is commanded, that he cause to come here in eight days of the purification of the blessed virgin *Mary* twelve, *£c.* of the vicinity of the hundred of *Offlow*, by whom, *£c.* And who neither, *£c.* To recognize, *£c.* Because as well, *£c.*

*Debt.*

*Qui tam for keeping a greyhound and killing a hare not being qualified.*

*Kent, to wit, E. L.* late, *£c.* was summoned to answer to the poor of the said parish of *E.* in the county aforesaid, and to Sir *J. S. Bart.* who sues in this particular as well for himself as for the said poor of the said parish of *E.* aforesaid of a plea, that he render to the said poor and the said *J. S.* who sues as aforesaid, 10 l. of lawful money of *Great Britain*, which he owes to, and unjustly detains from them, *£c.* And thereupon the said Sir *J.* who sues as aforesaid, by *H. C.* his attorney saith, that the said *E.* on the 13th day of *March* in the year of our Lord 1736, at and in the parish of *E.* aforesaid did keep a certain greyhound for the destruction of the game of this kingdom, he the said *E.* then not being a person qualified by the laws of this realm to keep a greyhound for the destruction of the game, against the form

of the statute in such case made and provided, whereby, and by force of the statute in such case lately made and provided, an Action hath accrued to the said poor of the parish aforesaid, and to the said Sir J. who sues as aforesaid, to demand and have of the said E. for his said offence 5 l. parcel of the said 10 l. And the said Sir J. who sues as aforesaid, further saith, that the said E. on the 30th day of *March* in the year aforesaid in the said parish of E. in the county aforesaid, did with a certain greyhound kill one hare, he the said E. then not being a person qualified to kill Game, against the form of the statute in such case lately made and provided, whereby, and by force of the statute in such case lately made and provided, an Action hath accrued to the said poor of the parish aforesaid, and to the said Sir J. who sues as aforesaid, to demand and have of the said E. for his said last mentioned offence 5 l. residue of the said 10 l. Yet the said E. (although often requested) hath not yet paid the said 10 l. or any part thereof, to the said poor and the said Sir J. who sues as aforesaid, or to either of them; but he to pay the same to the said poor and the said Sir J. who sues as aforesaid, hitherto wholly hath and still doth refuse to the said Sir J. who sues as aforesaid his damage of 10 l. and therefore as well for the said poor as for himself he brings Suit, &c.

*Plea,*  
Nil debet.

And the said *E. L.* by *R. P.* his attorney comes and defends the wrong and injury, when, &c. and says that he does not owe to the said Sir *J.* who as well, &c. the said Sum of 10*l.* or any part thereof, in manner and form as the said Sir *J.* who as well, &c. above thereof complains against him: And of this he puts himself upon the country; and the said Sir *J.* who sues as aforesaid, does likewise the same; Therefore, &c.

*Judgment for*  
*not entering*  
*Issue.*

And the said Sir *J. S.* although solemnly called came not, nor hath entered his said issue, nor hath further prosecuted his writ: therefore he and his pledges of prosecution are thereupon amerced, &c. and the names of the pledges of the said Sir *J.* are, &c. and that the said *E. L.* depart without day, &c. It is also considered, that the said *E.* do recover against the aforesaid Sir *J.* his damages by reason of the premisses, to 3*l.* 16*s.* 8*d.* to the said *E.* by the discretion of the justices here adjudged at his request for his costs and charges in this behalf sustained, according to the form of the statute in such case made and provided.

*Declaration*  
*for shooting a*  
*greyhound.*

Leicestershire, to wit, *H. R.* late, &c. was attached to answer *B. D.* in a plea, wherefore with force and arms a certain greyhound bitch, and a certain other bitch of the said *B.* of the price of 10*l.* at *M.* aforesaid in the county aforesaid, with a gun he shot at and killed, whereby the said

saïd *B.* not only lost the saïd bitches, but also certain young whelps, *to wit*, five young whelps of the saïd greyhound bitch, and certain young whelps, *to wit*, five young whelps of the saïd other bitch, which died for want of the saïd bitches to suckle them, *to wit*, at *M.* aforesaid; and a certain other greyhound bitch, and a certain other bitch of the saïd *B.* lately found at *M.* aforesaid, of the price of 10 *l.* he shot at, hit, struck, smote and wounded, by means whereof the last mentioned two bitches afterwards at *M.* aforesaid died, whereby the saïd *B.* not only lost the saïd two last mentioned bitches, but also certain other young whelps, *to wit*, five other young whelps of the saïd last mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two last mentioned bitches, which afterwards died for want of the two last mentioned bitches to suckle them, *to wit*, at *M.* aforesaid; and did other wrongs to the saïd *B.* to the great damage of the saïd *B.* and against the peace of our sovereign lord the king that now is, &c. And whereupon the saïd *B.* by *J. B.* his Attorney complains, that the saïd *H.* on the 15th day of *January* in the year of our Lord 1736, with Force and arms, &c. a certain greyhound Bitch, and a certain other bitch of the saïd *B.* of the price of 10 *l.* then found at *M.* aforesaid, with a gun he shot at and killed, whereby the saïd *B.* not only lost the saïd bitches, but

also certain young whelps, *to wit*, five young whelps of the said greyhound bitch; and certain young whelps, *to wit*, five young whelps of the other of the said bitches, which afterwards, *to wit*, the same day and year at *M.* aforesaid died for want of the said bitches to suckle them; and a certain other greyhound bitch, and a certain other bitch of the said *B.* then found at *M.* aforesaid of the price of 10*l.* shot at, hit, struck, smote and wounded; by means whereof the last mentioned two bitches afterwards, *to wit*, the same day and year at *M.* aforesaid died, whereby the said *B.* not only lost the two last mentioned bitches but also certain other young whelps, *to wit*, five young whelps of the last mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two last mentioned bitches, which afterwards, *to wit*, the same day and year died for want of the two last mentioned bitches to suckle them, *to wit*, at *M.* aforesaid, and did other wrongs to the said *B.* to the great damage of the said *B.* and against the peace of our said sovereign lord the king that now is, whereby the said *B.* saith that he is injured and damnified, to the value of 10*l.* And thereupon he brings suit, &c.

*Plea,  
Def. justifies  
as keeper of a  
park.*

And the aforesaid *H.* by *S. S.* his attorney comes and defends the force and injury, when, &c. And as to the coming with force and arms, and the whole trespass aforesaid above supposed to be done, except

except the shooting at, and killing of the said greyhound bitch in the said declaration first mentioned, saith that he is not guilty: And of this he puts himself upon the country; And the said *B.* likewise, *First issue.*

*Ec.* And as to the shooting at, and killing of the said greyhound bitch in the said declaration first mentioned above supposed to be done, the aforesaid *H.* saith, that the said *B.* ought not to have his aforesaid action thereof against him because he saith, that Sir *W. D. Bart.* long before the said time, when, *Ec.* and at the same time, when, *Ec.* was, and still is possessed of and in a certain antient park called *B.* park in *M.* aforesaid; in which said park, long before the said time, when, *Ec.* and at the said time, when, *Ec.* were great numbers of deer; of which park the aforesaid *H.* before the said time, when, *Ec.* and at the said time, when, *Ec.* was keeper, and had the care and custody thereof. And the said Sir *W.* being so as aforesaid possessed of the said park, the said greyhound bitch at diverse times before the said time, when, *Ec.* was used to haunt the said park, and to hunt, chase and drive the said deer, in order to bite, wound and kill them, to the great hurt and damage of the said deer; and at the said time, when, *Ec.* was in the aforesaid park for the purpose aforesaid; Whereupon the aforesaid *H.* as keeper and servant of the aforesaid Sir *W.* and by his command, at the said time, when, *Ec.* in the said park,

for the preservation of the said deer, there did shoot at, and kill the said greyhound bitch there, as it was lawful for him to do, which is the same shooting at and killing of the said greyhound bitch in the said declaration first mentioned, whereof the said *B.* doth above in that behalf complain against him: And this he is ready to verify: Whereupon he prays judgment, if the said *B.* ought to have his aforesaid action thereof against him, &c.

*Plea to a prohibition.*

And the said *T. K.* by *C. G.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he did not prosecute or follow his said suit in the said spiritual court against the said *R. R.* against the prohibition of our said lord the king to him directed and delivered in manner and form as the said *R.* who sueth as well for the king as for himself, by his writ and declaration aforesaid hath above supposed: And of this he putteth himself upon the country; And the said *R.* who as well, &c. likewise, &c. And for the obtaining the writ of our lord the king of consultation in this behalf, he the said *T.* saith, that long before the prosecution of the said suit in the said spiritual court against the said *R.* he the said *T.* was and now is seised of a certain antient messuage with the appurtenances, in *Park-Lane* in *Towcester* aforesaid, in his demesne as of fee, and that the said pew in the said church of *Towcester* in the said declaration mentioned, was and is an antient pew, without the addition

*First issue.*

addition of any seat or form in the said church within the memory of man taken in or made parcel of the said pew; and that he the said T. and all those whose estate he hath in the said messuage with the appurtenances, and their tenants thereof, from the time whereof the memory of man is not to the contrary, have and hath sustained, amended and repaired the said pew as often as need required, at his and their own proper costs, and by reason thereof from the time aforesaid he and they, and such other person and persons as he and they hath and have from time to time licensed to sit therein, hath and have used and been accustomed to sit therein to hear divine service and preaching the word of God in the said church as in a pew belonging to the said messuage with the appurtenances, so that no other person from the time aforesaid in time of divine service and preaching the word of God in the said church, hath had any seat or place in the said pew without the licence or against the will of the said T. or of those whose estate he hath in the said messuage with the appurtenances, or of his or their tenants thereof for the time being, neither could or ought such other person to sit therein, otherwise than by such licence as aforesaid. And the said T. saith, that he being so seised of, and dwelling in the said messuage with the appurtenances, the said R. who as well, &c. before the said prosecution in the said spi-

ritual court, *to wit*, on the 1st day of *April* in the year of our Lord 1733. in time of divine service in the said church, without the licence and against the will of the said *T.* did intrude himself into the said pew, and disturbed him the said *T.* and his family and friends then and there being by and with the licence of him the said *T.* wherefore he the said *T.* for remedy in that behalf, before the prohibition of our said lord the king to the contrary thereof to him directed was delivered, did institute his said suit in the said spiritual court against the said *R.* as it was lawful for him to do; without that, that he the said *R.* who as well, &c. and all those whose estate he had and hath in the said antient messuage in the said declaration mentioned to be then, or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own costs repaired one seat or form in the said church lately taken in, and made parcel of a pew in the said church, and therefore have had and used for themselves and family inhabiting in the said messuage the sole and separate use of the said seat or form for the hearing and attending of divine service in the said church in manner and form as the said *R.* who as well, &c. by his said declaration hath supposed: And this the said *T.* is ready to verify, with this also, that the said *T.* will verify, that the pew in the said declaration mentioned, and the pew in

in the plea of him the said *T.* beforementioned, is one and the same pew, and not different: Wherefore he prayeth judgment, and the writ of our said lord the king of consultation in this behalf to be granted unto him.

And the said *R. R.* says, that the said *Replication in T. K.* ought not, for the reason by him *prohibition.* alledged, to have his said majesty's writ of consultation in this behalf, because he says, as before, that he the said *R.* who as well, &c. and all those whose estate he had and hath in the said ancient messuage in the said declaration mentioned to be then or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own costs repaired one seat or form in the said church lately taken in and made parcel of a pew in the said church, and therefore have had and used for themselves and family inhabiting in the said messuage the sole and separate use of the said seat or form for the hearing and attending of divine service in the said church, in manner and form as the said *R.* who as well, &c. by his said declaration hath alledged: And this he prays may be inquired of by the country; And the said *F. K.* does the same: Therefore as well to try the said issue, as the aforesaid other issue between the said parties above joined, the sheriff is commanded, &c. *Vide ant. fol. 444.*  
And

*Plea to a bond  
that it was gi-  
ven for money  
won at play.*

And the said *H.* by *G. S.* his attorney cometh and defendeth the force and injury, when, &c. and prayeth the hearing of the said writing obligatory, and it is read to him, in these words, *to wit*, Know all men, &c. [*the obligation*] and he prays also the hearing of the condition of the said writing obligatory, and it is read to him in these words, *to wit*, [*here enter the condition*] which being read and heard, he the said *H.* saith, that he by virtue of the said writing obligatory ought not to be charged with the said debt, because he saith, that after the 29th day of *September* in the year of our Lord 1674. and before the making the said writing obligatory, *to wit*, on the said 1st day of *July* in the said year of our Lord 1733. at *Westminster* aforesaid, he the said *H.* played with the said *S.* at a certain play with dice called *Hazard*, for diverse sums of money exceeding the sum of 100*l.* upon tick and credit, and not for ready money; and that he the said *H.* so playing with the said *S.* at the said play, then and there at one and the same time and meeting lost upon credit to and with the said *S.* in the whole a great sum of money, exceeding the sum of 100*l.* *to wit*, the sum of 500*l.* whereof no part was then paid by the said *H.* And the said *H.* afterwards thereupon, *to wit*, on the said 1st day of *July* in the year of our Lord 1733. aforesaid at *Westminster* aforesaid, made and delivered the aforesaid writing obligatory with the aforesaid

said

said condition thereto subscribed for the securing the payment of the said 500*l.* by him the said *H.* so lost; and by the said *S.* so as aforesaid at the said play won of the said *H.* at one and the same time and meeting, upon credit, whereby by force of the statute in such case made and provided the said writing obligatory wholly became and is void, and of no effect in law: And this he is ready to verify: Wherefore he prays judgment, whether he ought to be charged with the said debt by virtue of the said writing obligatory, &c.

And the said *S.* saith, that by reason of *Replication.* any thing above by the said *H.* in pleading alledged, he ought not to be barred from having his said action against him, because he saith, that the said bond was not given for securing the payment of money won at the said play by the said *S.* of the said *H.* as the said *H.* hath above pleaded: And this he prays may be inquired of by the country; And the said *H.* likewise; Therefore, &c.

And the said *J.* by *R. S.* her attorney, *Plea to an arbitration bond.* &c. and prays oyer of the said bond, and it is read to her, &c. she also prays oyer of the condition of the said bond, and it is read to her in these word, *to wit,* The condition, &c. [*here recite the condition*] which being read and heard, the said *J.* says, that the said *J. A.* ought not to have his said action against her, because she says, that the said arbitrators in the said

*Arbitrators  
made no a-  
ward.*

said condition of the said bond named did not make any award for or upon the premisses in writing indented under their hands and seals, ready to be delivered to the said parties on or before the said 29th day of *October* next ensuing the date of the said bond; neither did the said arbitrators chuse any umpire for the ending and composing the differences aforesaid, within the time in the condition of the said bond limited in that respect: And this she is ready to verify: Wherefore she prays judgment, if the said *J.* ought to have his said action against her, &c.

*Replication.*

And the said *J.* saith, that he ought not by reason of any thing above alledged by the said *J.* to be barred from having his said action against her, because he says that on the 29th day of *October* in the condition above-mentioned, the said *J. W.* and *T. S.* the arbitrators named in the said condition, having taken upon them the burden of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, for the settling amity and friendship between them at the city of *Bath* aforesaid in the county aforesaid, made and published their award and order of and concerning the premisses specified in the aforesaid condition, in writing indented under their hands and seals, in manner and form following (that is to say) That all actions, suits, quarrels, controversies and demands whatsoever, had, moved, arisen and depending

pending between the said parties, for any manner of cause whatsoever to the day of the date of the said award, should cease and be no farther prosecuted; and that each of the said parties should pay and bear his and her own costs and charges in any wise relating to or concerning the said premisses; And the said arbitrators in and by their said award did further award, order and finally determine, that the said *J. S.* her heirs, executors or administrators, should pay to the said *J. A.* his executors or administrators, the full sum of 29 *l.* of good and lawful money of *Great Britain*, without any deduction whatsoever, at one intire payment, on the 30th day of *January* then next ensuing, at 11 of the clock in the forenoon of the same day, in the church porch of the parish of *Wallcot* in the county of *Somerset*. And lastly, the said arbitrators in and by their said award did award, order and finally determine, that on payment of the said sum of 29 *l.* the said *J. A.* and *J. S.* should in due form of law execute each to the other of them general releases, sufficient in the law for the releasing each to the other of them, his and her heirs, executors and administrators, of all actions, suits, arrests, cause and causes of action, and suit, quarrels, controversies and demands whatsoever, for, touching or concerning any matter, cause or thing whatsoever, from the beginning of the world until [*the date of the bond*] as by the said award now produced here  
in

in court more fully appears. And the said *J. A.* in fact says, that although he hath performed and fulfilled every thing specified in the aforesaid award on his part to be performed and fulfilled; Nevertheless the said *J.* hath not paid to him the said *J.* the said sum of 29 *l.* on the said 30th day of *January* next after the date of the said award, which she ought to have paid to him on that day, according to the form and effect of the said award: And this he is ready to verify: Wherefore he prays judgment, and his debt, together with his damages, by means of the detention of the said debt to be adjudged unto him.

*Plea that def.  
did not assume  
within 6 years,  
and that he  
was a bank-  
rupt.*

And the said *D.* by *T. B.* his attorney comes and defends the force and injury, when, &c. and says, that he did not assume upon himself in manner and form as the said *G.* above complains against him: And of this he put himself on the country; and the said *G.* likewise. And the said *D.* by leave of this court, according to the form of the statute in that case lately made and provided, further says, that the said *G.* ought not to have his said action against him the said *D.* because he says, that he the said *D.* did not assume upon himself in manner and form as the said *G.* above complains against him at any time within six years next before the day of obtaining the said original writ of the said *G.* And this he is ready to verify: Wherefore he prays judgment,

ment, if the said C. ought to have his said action against him the said D. And the said D. by leave of this court, according to the form of the said statute in that case lately made and provided, further says, that the said G. ought not to have his said action against the said D. because he says, that he the said D. since the 26th day of *May* in the year of our Lord 1716, mentioned in a certain act made in the parliament of his late majesty king George I. held by prorogation on the 11th day of *November* in the year of our Lord 1718, intituled, *An act for the better preventing frauds committed by bankrupts*; and during the continuance of the said act, to wit, on the — day of — in the year of our Lord — at *Westminster* aforesaid, became a bankrupt within the intencion and meaning of the severall statutes made and in force against bankrupts. And the said D. further says, that the cause of the aforesaid action in the declaration aforesaid above specified, did accrue to the said G. before the time in which he the said D. did as aforesaid become bankrupt: And of this doth put himself upon his country.

And the said N. and I. by J. H. their attorney come and defend the force and injury, when, &c. and say, that they did not undertake in manner and form as the said J. above complaineth against them: And of this they put themselves upon the country,

*Award of Verdict, and writ of inquiry, where two debts appear and one lets judgment go by default.*

country; And the said *J.* likewise: And the said *M.* by *H. K.* his attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the aforesaid action of the aforesaid *J.* whereby the said *J.* remains undefended by the said *M.* by reason whereof the said *J.* ought to recover against the said *M.* his damages, occasioned by the non-performance of his said promises and undertakings, but because it is not known whether or no the said *N.* and *I.* will be convicted of the premisses; and if they shall be convicted, it is convenient and necessary that there should be only *one taxation* of damages for the whole premisses in one writ specified; and those damages ought to be settled by the jury of the country in that behalf; And that the writ of inquiry of damages aforesaid against the said *M.* be stayed, until the said issue as aforesaid between the said *J.* and the said *N.* and *I.* shall be determined; Therefore, as well to try the issue between the said *J.* and the said *N.* and *I.* above joined, as also to inquire what damages the said *J.* hath sustained by occasion of the premisses aforesaid, the sheriff is commanded that he cause to come here 12 free and lawful men of the body of his county, &c. By whom, &c. And who are not related to he said *N. I.* or *M.* or the said *J.* To recognize, &c. Because as well, &c.

*Easter term, &c.*

Middlesex, *R. S.* of, &c. was attached to  
*to wit,* *R.* answer *R. T.* and *P. L.* in  
a plea of trespass upon the case, to their  
damage of 43 *l.* Roll 1022.

Afterwards, *to wit,* the 25th day of  
*July* in the 13th year of the reign of our  
lord the king that now is, the aforesaid *R.*  
*T.* and *P. L.* come by *H. P.* their attorney  
constituted by a special warrant to him in  
that behalf, before Sir *J. W.* Knt. C. J. of  
our said sovereign lord the king of the  
Bench, at his chambers situate in *Serjeants*  
*Inn* in *Chancery Lane, London,* and acknow-  
ledged that they were satisfied of the a-  
foresaid damages: Therefore let the said  
*R. S.* be discharged of those damages.

*Acknowledged the 25th day*  
*of July 1739, at Ser-*  
*jeants Inn, before me,*

J. W.

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## Rule or Measure of COSTS.

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### WRITS.

	l.	s.	d.
<i>Capias</i> into London —————	0	9	6
into any other country ———	0	10	6
<i>Capias</i> by continuance into London —	0	8	6
into any other country ———	0	9	6
<i>Testatum Capias</i> —————	0	8	6
<i>Non Omittas Capias</i> —————	0	9	8
Attachment of contempt —————	0	7	9
Attachment proper —————	0	7	6
<i>Testatum</i> attachment —————	0	10	0
<i>Venire</i> —————	0	7	9
<i>Habeas Corpora</i> —————	0	8	6
<i>Subpœna ducens decem</i> —————	0	7	6
Common <i>Subpœna</i> —————	0	6	6
Drawing and ingrossing <i>Scire facias</i> per sheet each —————	0	0	8
besides fee —————	0	6	8
Special original, per sheet ———	0	0	8
Fee —————	0	6	8
Drawing and ingrossing writ of inquiry, per sheet —————	0	0	4
Fee —————	0	3	4
<i>Habeas Corpus</i> fee —————	0	6	8
Writ of possession fee 3 s. 4 d. —	0	3	0
Making the writ 1 s. 8 d. ———	0	3	0

Super-

# in the Court of Common Pleas.

483

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Superfedeas</i> —————	0	8	9
<i>Fi. Fa. and Ca. Sa. each</i> —————	0	6	9
<i>Testatum Fi. Fa. and Ca. Sa. each</i>	0	10	0

## ARRESTS, &c.

<i>Serving process</i> —————	0	5	6
<i>Arrests</i> —————	0	10	0

Nothing more to be allowed for extraordinary expence and trouble, even between attorney and client, except it be by the client's exprefs order.

Serving notice of declaration, or executing a writ of inquiry (if under 20 miles) *3 d. per mile* to and from the place, *i. e.* *6 d. per mile* in the whole.

The like allowance in case of conduct money.

If above 20 miles, for a neighbouring attorney ————— } 0 10 6

To allow *1 s. 4 d.* for every defendant the plaintiff appears for, over and above the *5 s. 4 d.* allowed for the first defendant.

Enttring appearance between attorney and client ————— } 0 5 4

Copies of affidavits in order to shew cause, *per sheet* ————— } 0 0 4

## ACTIONS on Judgments or Statutes.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Drawing, per sheet</i> —————	0	0	8
<i>Copying</i> —————	0	0	8

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Entering _____	0	0	8
Term fee _____	0	6	8

## ISSUES, &amp;c.

Drawing issue, <i>per sheet</i> _____	0	0	4
Drawing forejudger 2 s. ingros- sing the whole, <i>per sheet</i> _____	0	0	4
Drawing and ingrossing affidavit, <i>per sheet</i> _____	0	0	8
Drawing judgment 2 s. ingros- sing the whole, <i>per sheet</i> _____	0	0	4

## Preparing for TRIAL.

Passing record _____	0	6	8
Town witnesses (if the charge exceeds 40 s. allowed in com- mon costs) <i>per diem</i> _____	0	2	6
Country witnesses, <i>per diem</i> _____	0	5	0
Attending the trial every day 6 s. 8 d. and on the day of trial between attorney and client _____	0	13	4
If between party and party, in the whole _____	0	13	4

## BAIL-BONDS.

Common costs in the sheriff's name _____	2	10	0
On an assignment, if 12 sheets, judgment by <i>Nil dicit</i> _____	4	10	6
For every three sheets more _____	0	10	0
If the plaintiff enter appearance for defendant, more _____	1	0	0
On <i>Compar' ad diem</i> , the old way _____	3	10	0
On the new way _____	5	10	0

For

# in the Court of Common Pleas.

485

For every 3 sheets above 12 in a } *l. s. d.*  
 declaration ————— } 0 10 0

## DEMURRERS.

*Concilium* and attendance ——— 0 13 10  
 Argument and attendance ——— 1 7 8  
*Uterius Concilium* ————— 1 7 0  
 Besides rules and service.

## NON PROS.

For not declaring where appear- }  
 ance ————— } 1 13 4  
 With bail, more ————— 0 10 0  
 For not replying ————— 2 13 4  
 If bail more ————— 0 10 0  
 For not joining in demurrer to }  
 declaration ————— } 3 6 8  
 Bail, more ————— 0 10 0  
 And for every other pleading }  
 more, if short ————— } 1 0 0  
 For not entering issue ————— 3 3 4  
 Bail more ————— 0 10 0  
 For every count more than the }  
 first ————— } 0 3 0

## COGN' DAMPN'.

1. Narr' the same ————— 5 0 0  
 Of different terms ————— 5 10 0  
 Every Narr' more ————— 0 10 0  
 With bail more ————— 0 10 0

## By DEFAULT.

Inquiry 1 Narr' ————— 7 10 0  
 Every Narr' more ————— 0 10 0  
 I i 3 If

	<i>l.</i>	<i>s.</i>	<i>d.</i>
If plaintiff enters appearance	1	0	0
If in trespass and imprisonment, assault, &c.	7	16	8
If plaintiff enters appearance	8	16	8

## TRIALS.

Common costs 1 count	14	10	0
For every count more	0	10	0
For trespass, assault or imprisonment, 5 sheets or under	14	16	8
Every three sheets more	0	10	0
In ejectment, one demise	15	16	8
Every demise more	0	10	0
Common costs for not confessing lease, entry and ouster on the rule	16	16	8
Attending taxing costs, though many causes in a bill, only consider'd as one cause, for only	0	3	4

## OBSERVATIONS.

1. Nothing for attending a sheriff or marshal in any case.

2. Declaration where *Habeas Corpus* is brought to follow the office the *Habeas Corpus* is signed in.

3. No attorney to be privileged in any suit, unless it appears on the face of the declaration that he sues for fees; other counts not for fees to be paid for; and no privilege where he is defendant, either as to appearance or pleading

4. No

4. No declaration to be allowed if the plaintiff be summoned the day before the return; but if served upon the return-day, then declaration and entry to be allowed if declaration produced.

5. No maps to be allowed on trials *inter partes*.

6. No wrong or under-charge to be supplied in any manner, except in fee for passing record when only charged 3 s. 4 d. instead of 6 s. 8 d.

*Of the duty and fees of the sheriff of Middlesex, his Under-sheriff, &c.*

**I**T is the duty of the sheriff of *Middlesex*, by himself and deputies, to attend all his majesty's courts, judges, justices and commissioners within his county; and to execute all writs and processes by them and every of them directed to him; and also to hold his county-courts, tourns and court leets within the same.

The sheriff of *Middlesex*, who are also sheriffs of *London*, is nominated by the citizens thereof; and are, as sheriffs of *London*, at much greater expence in passing through their office than the sheriff of any other county in *England*; and therefore oblige their under-sheriff of *Middlesex*, out of the fees and profits arising from that office, to advance money from time to time to pay all rewards payable by the said sheriff for apprehending highwaymen

and other malefactors, which are given by several acts of parliament, and to pay the wages of the justices of peace attending at the several sessions of the peace for the said county of *Middlesex*, and to bear part of the expence of the entertainments at the sessions of gaol-delivery held in the *Old-baily*, *London*, for the county of *Middlesex*, which, together with other charges incident to the said office, amounts annually at least to the sum of 450 *l*. For the dispatch of the business of the county he keeps his office at *Furnival's Inn*, *Holborn*, wherein, besides his own attendance, three clerks are daily imployed (*Sundays* and holidays excepted); they have no salary nor wages, but the allowance hereafter mentioned, out of the fees. And in consideration of his giving security to the said sheriff in the sum of 12,000 *l*. to indemnify him from all damages and losses that may happen from the mistake, omission or misdemeanor of him, his deputies, clerks or bailiffs, the sheriff hath granted to him all the lawful fees, profits and perquisites belonging to the said office; and in virtue thereof he claims the several fees and sums of money hereafter mentioned, which are all the fees belonging to the said office, except what may be claimed by the county clerk.

# in the Court of Common Pleas. 489

Sheriff. Clerks. Total.

l. s. d. l. s. d. l. s. d.

To the charge of passing the sheriff's accounts for <i>Middlesex</i> in the <i>Exchequer</i> by Stat. 3 Geo. 2.	119	3	0			
Of every bailiff, when admitted into his office, in lieu of all fees due to the sheriff on arrests that may come to his hands, except fees on executions (commonly called <i>poundage</i> ).	6	10	0			
Of every bailiff more for his indenture of covenants and bond to perform the same, and attending the execution thereof				1	1	6
For every warrant on a bill of <i>Middlesex</i> , <i>Capias</i> or <i>Quo Minus</i>	0	0	4			
For every name more than one.				0	0	4
For every warrant on a special <i>Capias</i> or <i>Quo Minus</i> , i. e. containing the whole declaration	0	0	4	0	2	0
For every warrant on a writ of <i>Scire Facias</i> , <i>Extent</i> , <i>Elegit</i> , <i>Summons</i> against privileged persons, Original in real or personal actions, <i>Pane</i> , <i>Ven. facias</i> out of the <i>Exchequer</i> , Attachment for the Peace out of the Crown-Office, <i>Disfringas</i> , Writ of Possession, <i>Capias Excommunicatum</i> , <i>Ne Exeat Regno</i> , <i>Supplicavit</i> , and <i>Capias si Laicus</i>				0	2	4
For every Bail-bond taken in the office, (which rarely happens, the bond being usually taken from defendants in custody, by the bailiff,) for searching the office and making a <i>Superfedeas</i> to set the defendant at liberty				0	9	4
For taking security on a writ of <i>Ne Exeat Regno</i> ; searching the office, and <i>Superfedeas</i> to set the defendant at liberty				1	1	0

For

	Sheriff.	Clerks.	Total.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
For a bond on an attachment <i>pro pace</i> out of the Crown-Office		0 2 4	
For taking security on a writ of <i>Supplicavit</i> , which rarely happens, searching the office, and for a <i>Superfedeas</i> to set the defendant at liberty		0 10 6	
For the assignment of every bail bond	0 2 4		
For the plaintiff's discharge for the same	0 2 4	0 5 0	
For the return of the writ	0 0 4		
For the delivering up of a bail-bond back to the debt. by the plt's order		0 5 0	
Fees for returns of writs			
For allowing every writ of <i>Habeas Corpus cum Causa</i>	0 4 8		
For the return thereof, if but one writ to be returned against the defendant	0 2 4	0 2 0	0 7 4
For a warrant to the bailiff to conduct the defendant before the judge or court, as the writ is returned	0 2 4		0 9 4
For every other writ against the defendant returned thereon	0 2 0	0 0 4	0 2 4
If the defendant is in the gaol, then for a warrant to the keeper to deliver the defendant to the bailiff		0 2 4	
For executing a writ of Inquiry of Damages and Return of the Inquisition thereon	0 10 0	0 3 4	
To the bailiff for summoning and swearing the jury	0 4 0		
For the use of the court house or room where the writ is executed	0 1 0		1 10 4
To the jurors, each 1s.	0 12 0		
	9 17 0		
For swearing each witness		0 0 4	

# in the Court of Common Pleas. 491

Sheriff. Clerks. Total.

	l. s. d.	l. s. d.	l. s. d.
For taking an Inquisition on a <i>Capias</i> <i>Utlagat</i> . Schedule of the goods seized and return thereof		0 18 6	
To the bailiff for summoning the jury	0 4 0		
To the use of the room where the inquisition is taken	0 1 0		1 15 6
To the jurymen, each 1 s.	0 12 0		
	0 17 0		
If more than one finding for every other		0 3 4	
The like on extents		0 18 6	
For every finding, if more than one, each		0 3 4	
Attending each adjournment		0 10 0	
For a summons for a witness to give evidence		0 2 0	
For taking an inquisition on a <i>Scire Fieri</i> Inquiry, Inquisition and Return thereof	0 10 0	0 8 6	0 18 6
For the return of a <i>Capi Corpus</i> or <i>Non Invent.</i> on every bill of <i>Middlesex</i> , <i>Capias</i> , <i>Quo Minus</i> , <i>Capias ad Satisfaciendum</i> , and <i>Capias Utlagat</i> . if no inquisition taken		0 0 4	
For the like return, if by a bailiff of a liberty		0 0 8	
Return of <i>Istud Breve</i>		0 0 4	
For returning <i>Fieri faci</i> on a <i>Fieri facias</i>		0 2 0	
If by the bailiff of a liberty		0 4 0	
For returning <i>Nulla bona</i> thereon		0 1 0	
If by the bailiff of a liberty		0 2 0	
For special returns, such as Rescue, Defendant discharged by <i>Superseatas</i> , or committed to the <i>Elect</i> or <i>King's Bench</i> Prison on a writ of <i>Habeas Corpus</i>		0 2 4	
For the return of <i>Venditioni Exponas</i>		0 2 0	
For the return of <i>Scire faci</i> , each name		0 2 0	

For

Sheriff. Clerks. Total.

	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the return of <i>Nilil</i> or <i>Mortuus</i> on a <i>Scire facias</i>		0	1	0					
For the return of an escape warrant		0	2	0					
For the return of a <i>Venire facias</i> , summons against privileged persons, or original, that the deft. is summoned		0	2	0					
For the return of a <i>Nilil</i> thereon		0	1	0					
For the return of <i>Non Invent.</i> on an attachment out of the courts of <i>Chancery</i> , <i>Exchequer</i> , or Dutchy of <i>Lancaster</i>		0	1	0					
For the return of a <i>Capi Corpus</i> thereon		0	2	0					
For the return of <i>Non Invent.</i> on a proclamation out of the courts of <i>Chancery</i> , <i>Exchequer</i> , or Dutchy of <i>Lancaster</i>		0	2	0					
For the allowance of every writ of <i>Superfideas</i> or <i>Restitution</i>	0	2	0	0	0	4	0	2	4
For a warrant thereon to discharge the defendant's body or goods out of custody		0	2	4					
For the return of a writ of <i>Venire facias Juratores</i> , with the panel of 48 freeholders names thereto annexed	0	2	0						
For the return of a writ of <i>Distringas</i> or <i>Habeas Corpora</i> , with a panel of 48 freeholders names annexed thereto	0	12	0						

*N. B.* The sheriff makes up a panel of 48 jurymen for each court in *Westminster-Hall* every term, but before he can do that by his officer, he inquires after a competent number of persons names taken out of the freeholders book for that purpose; makes out a warrant to his bailiffs to summon them; delivers a panel to the marshal of each chief justice or chief baron; attends the court by himself or deputy during each sessions of *Nisi Prius*; and after term enters the names of each jurymen in an alphabetical register, and gives certificates to each jurymen of his attendance (if required); for all which no fee is claimed or taken.

For

# in the Court of Common Pleas. 493

Sheriff. Clerks. Total.

	l. s. d.	l. s. d.	l. s. d.
For the return of a writ of possession		0 2 0	
Attending the master of the King's Bench office, prothonotary of the court of Common Pleas, or deputy remembrancer of the court of Exchequer, from the plaintiff and defendant, each one guinea	2 2 0		
For attending with the jury on a view, and certifying to the court that the view has been had, the same fee as is paid to each jurymen			
For attending every trial at bar, or at Nisi Prius, where a special jury is summoned, the same fee as is given to each jurymen after the trial			
N. B. The last mentioned fee is taken by the under-sheriff or clerk who attends the trial.			
For every warrant to a bailiff to summon a special jury		0 2 4	
<i>Fees called Poundage.</i>			
For taking a defendant in execution, or levying the goods for every sum of money not exceeding 100 l. for every 20 s. thereof	0 1 0		
For every 20 s. exceeding that sum	0 0 6		
For the like on an Extent, Fieri facias, or Capias ad Satisfaciend. at the suit of the king	0 1 6		
For every 20 s. after the first 100 l.	0 1 0		
For every 20 s. levied on a Levary facias the summons of the pipe or green wax (except post-fines)	0 1 0		
For executing every writ of possession for every 20 s. of the yearly value of the premisses, of which possession is given	0 1 0		

For

Sheriff. Clerks. Total.

	l. s. d.	l. s. d.	l. s. d.
For the return of a precept to summon the jury before the commissioners in a commission of ideocy or lunacy, and attending thereon	2	2	0
For the return of a <i>Venire facias</i> jur and attending the trial of a traverse at the sessions of the peace on every indictment, except for felony, or where the defendant is in prison		0	10
N. B. The sheriff summonses, impa- nels and returns 8 grand juries in the year, at the several sessions of the peace at <i>Hicks's Hall</i> , and at- tends by his deputy during all the time of the sessions there, and also returns 8 juries in the year at the several sessions at the <i>Old Bailey</i> , besides party juries and juries of matrons; and attends there without any other fee or reward whatso- ever			
For a bill of sale of goods on a <i>Fieri facias</i> , and an inventory thereunto annexed		0	9
For a bill of sale of a term of years		0	13
The like on a <i>Venditioni exponas</i>		0	13
For allowing a writ of <i>Non Ponend. in Affs.</i>		0	13
For charging a defendant in custody with every other writ than that on which he is arrested		0	2
For a certificate in order for a <i>Superfed.</i>		0	2
For a certificate that the defendant is in execution in order for his discharge by the late act of parliament		0	2
For his discharge by the rule of court thereon		Nothing	
For attending with writs and other things out of the office, to be pro- duced on trial, for each day's atten- dance		0	6

# in the Court of Common Pleas. 495

Sheriff. Clerks. Total.

l. s. d. l. s. d. l. s. d.

For the plaintiff's discharge on every writ of *Fieri facias*, whereon money has been levied, or on a *Capias ad Satisfaciend.* executed on the defendant, and on every writ on which the defendant is committed to the gaol

For searching the books and files, and a warrant to the keeper of *Newgate* to discharge the defendant out of custody

*N. B.* The defendants are oftner discharged out of *Newgate* without paying any fees than with. Copies of writs are given, and searches are made for prisoners in *Newgate* without any fees for the same.

For every search

For a short copy of a writ in order to put in bail by

For searching for a writ in force; which is never done but upon the undertaking of some attorney to put in bail thereto

For a copy of a bill of *Middlesex*, *Capias* or *Quo Minus* at length

For copies of all writs or other things, for every sheet of copy wrote

For executing and returning a writ of False Judgment, or *Accedas ad Cur'*

0 2 4

0 2 4

0 0 4

0 0 6

0 1 0

0 1 0

0 0 6

0 6 8

Fees for executing a writ of *Ad quod Damnum* cannot well be settled, but must be left to the sheriff and the party to be adjusted between them, because the inquisition on this writ is always taken on the place where the highway to be inclosed lies, or where the intended fair or market is to be held; which may occasion the sheriff's travelling a considerable journey.

Fees for executing a writ of Partition cannot well be settled for the same reason; and a provision is made by *Stat. 8 & 9 W. 3. c. 31.* for settling the same in case the sheriffs and the parties cannot agree.

For

# 496 *The Attorney's Practice, &c.*

*Sheriff. Clerks. Total.*

	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
For attending lord mayor, as conservator of the river <i>Thames</i> ; making warrants on the writs of <i>Capias</i> , and summons and returning the same, and for summoning, impanelling and returning the grand jury at the first court in every year, the water-bailiff pays		1 1 0	
For attending the lord mayor at the second court in every year, and returning the summons and <i>Capias</i> process, the water-bailiff pays		0 10 6	
For summoning, impanelling, and returning the traverse jury, and attending the trials there, which very rarely happens		0 10 0	
For returning, summoning and impanelling a jury, and attending commissioners in a commission out of the <i>Exchequer</i> to find debts		0 10 0	
For the like on a forcible entry before two justices, which happens but very seldom		0 10 0	
For a warrant on a precept for two justices to remove the force after such inquisition taken		0 2 4	

24 *March* 1732.

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# I N D E X.

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